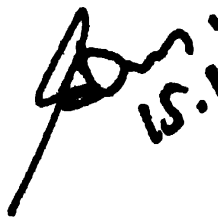


Zilla Court Decisions--

ZILLA COURT DECISIONS


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ZILLAH BACKERGUNGE.

PRESENT: W. J. H. MONEY, ESQ., JUDGE.

THE 4TH JANUARY 1850.

No. 67 of 1849.

*Appeal from the decision of Umbeeka Churn Mitter, Moonsiff of
Burrisaul, dated the 19th May 1849.*

Neemchand Doss, (Defendant,) Appellant,

versus

Ram Gopaul Dutt, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff for possession of a neem howla, with mesne profits, damages laid at 44 rupees. It appeared that in pergunnah Edranpoorh, jooar Shooreekool, kismut Tamyund Pyloo, mouzah Kondpasha, there were 5 gundas of birmuttur land, occupied as a residence by Pudlochun Chowdree: that on the 19th Poos 1238, Pudlochun gave him (plaintiff) a howladaree lease for that land at a jumma of 8 annas Sicca, in the name of his (plaintiff's) son, Goureenath Dutt, and he obtained a confirmatory grant from the heirs of the talookdar: that Pudlochun died in Maugh 1238, leaving his aunts Soorjumunnee and Ramlukhee, of whom the former was *non compos*, and in consequence the rent was paid to Ramlukhee and receipts granted: that on the 5th Poos 1239, he sold his howla tenure to the father of John S. Brown, and on the 7th Poos received from him, in the name of his (plaintiff's) son, Sreenath, a neem howladaree lease at a jumma of 1 rupee Sicca, and remained in possession as before: that Neemchand Doss, on the 28th Kartikh 1241, claiming that land as his howla for which Gunga Doss paid rent, was anxious to get possession; and on the 3rd Aughun, the defendant removed some of the thatch and forcibly ejected him: that the case came before the principal sudder ameen, who took recognizances from him and Neemchand, leaving the house as it was, each party being at liberty to seek redress in the civil court: that this order was confirmed by the magistrate, and, in appeal to the sessions judge, the land was attached, and the case returned for the purpose of being considered

under the provisions of Regulation XV, of 1824: that as neither party attended to the case it was struck off the file, and the land has remained in the possession of the defendant.

* Neemchand denied the plaintiff's statement, and declared that he had received on the 3rd Srawun 1239, from Soorjumunnee Debea and Ramlukhee Debea, for a consideration of 30 rupees Sicca, a howladaree lease of the land alluded to, at a jumma of 4 rupees Sicca, which was confirmed by two separate grants of the talookdar, dated the 11th and 12th Srawun, and, on the 2nd Srawun 1241, Gungadoss Sein was established as a ryot and paid rent to the Debeas: that from the date of his pottah to the date of the plaintiff's action, 14 years and 4 months had elapsed, and calculating from the 28th Kartikh 1241, mentioned by the plaintiff as the commencement of the quarrel, 12 years and 5 days had elapsed: that the plaintiff's assertion as to the date was opposed to his reply in a former case in the criminal court, where he mentioned being in possession on the 8th Poos: that the plaint was undervalued, and the pottah should have been dated prior to the death of Pudlochun Chowdree, and should have borne the signature of his sharers: that two of the defendants, Basse Ram and Kalachand Deb, had been included as such to prevent their giving evidence.

John S. Brown supported the plaintiff's statement as to the sale of his howla to his father, and to the plaintiff receiving a neem howladaree lease in return.

Gungadoss confirmed the assertion of Neemchand, as also Sheeb Shunker, Sumboonath Chuckerbutty, and Deenonath Chuckerbutty, who denied the existence of the plaintiff's howla or neem howla. Kartik Chunder Kur and Joy Chunder Chuckerbutty supported the plaintiff's claim.

The plaintiff, in his replication, observed that, after Pudlochun's death, his aunts, Soorjumunnee and Ramlukhee, were never in possession.

Neemchand, in his rejoinder, remarked that the pottah of the plaintiff was not produced in the first instance, and further, if the sale to Mr. Brown had been true, he would have received some confirmatory grant from the talookdar, which is not even thought of: that although the plaintiff had stated Soorjumunnee and Ramlukhee being never in possession, he nevertheless had produced two dakhilas said to have been given by Ramlukhee in 1238 and 1239: and if the sale to Mr. Brown had been true, this howla would have been inserted in the list of property belonging to Mr. Brown, when under the management of his guardians: he insisted that the plaint had been undervalued, and that 5 gundahs of land instead of 20 beegahs was worth 125 rupees.

The moonsiff considered the dispossession of the plaintiff proved, as well as the authenticity of his pottah, and was of opinion that the plaint was neither barred by lapse of time nor undervalued; and, with reference to the supposed imbecility of Soorjumunnee, one

of the females, from whom the defendant was said to have received his pottah, and the fact of only one witness out of a number being produced to attest that document, and the evidence of that one witness being unsatisfactory, he gave a decree in favor of the plaintiff.

The appellant commenced by repeating the objections urged before, and remarked that two of his witnesses were ill, whom he was anxious to have examined by an ameen: that although three witnesses deposed to Soorjumunnee's imbecility, there was no certainty as to the *time*, and her subsequent illness could not affect the validity of his pottah.

The respondent's remarks were merely a repetition of his former pleas, with this addition, that Pudlochun died on the 5th Maugh 1238, and not, as inferred by the appellant, on the 19th Poos, and that Issun Chunder, one of those whose names were on the pottah of the appellant, did not come of age till the year 1239.

There is a contradiction in the plaint and in the reply of the respondent in the criminal court as to the date of his dispossession, and considering that the 28th Kartikh was mentioned as the commencement of the dispute, it is doubtful if the plaint is not barred by lapse of time, and with regard to the valuation of the plaint the moonsiff did not make any enquiry. Independent, however, of these two points, it appears that the pottah of the respondent was not filed till the 26th December 1848, though the plaint was lodged on the 16th November 1846, and no mention was made of the price paid for the lease; and although Pudlochun had other sharers, yet his name only appears as the donor; the respondent, moreover, declared that Soorjumunnee and Ramlukhee were not in possession, but he produced a dakhila, signed by Ramlukhee Debea in support of his pottah. Again, the howladaree pottah for which the respondent is said to have given rupees 25, is sold to Mr. Brown for rupees 15, and he again gives as neem howladaree pottah without any consideration being received, and the appellant's declaration relative to the howla, said to have been sold to Mr. Brown, not being included in the list of his property, when under the care of guardians, has not been denied, and bears strongly against the respondent's claim. Upon these grounds, therefore, I attach no credit to the genuineness of the respondent's pottah: the appeal is decreed, the moonsiff's order reversed, and the plaintiff's suit dismissed, and the respondent will further pay the costs of both courts.

THE 5TH JANUARY, 1850.

No. 17 of 1847.

Appeal from the decision of Moulree Mahomed Kuleem, dated the 27th January 1847.

Deb Narain Chuckerbuttee, Bhugwan Chunder Chuckerbuttee, and Juggut Chunder Chuckerbuttee, for themselves and as guardians of Cashee Chunder Chuckerbuttee, brother, and Tarneepershad Chuckerbuttee, nephew, minors, and Mudunmohun Chuckerbuttee, and Tripoora Debeca, wife of Nubkishore Chuckerbuttee, mother of Ram Nursing Chuckerbuttee, minor, and Surmoonnissha Khatoon, wife of Meer Abbass Allee, (Defendants,) Appellants,

versus

Gopal Kishen Rae and Manik Malla Chowdrain, wife of Gobind Chunder Rae, deceased, (Plaintiffs,) Respondents. . . .

THIS suit was instituted by the plaintiffs to recover the sum of 1,148 rupees, 8 annas, 4 pie, 16 krants, under the following circumstances. It appears that in the 8 annas, 12 gundas, 2 cowrees, 2 krants share of pergunnah Chunder Deep, after a subdivision into 16 portions, Gopal Kishen Rae, and Gobind Chunder Rae, the husband of Manik Malla, had a 2 annas 15 gundas share; that in connection with the whole estate there was a talook called Zimma Mehal Raj Mata, the jumma of which was 5,438 rupees, 6 annas, 1 gunda, 1 cowree Sicca, which for the 8 annas, 12 gundas, 2 cowrees, 2 krants share would give 2,933 rupees, 13 annas, 1 gunda Sicca, and for the 2 annas 15 gundas there would be 504 rupees, 3 annas, 19 cowrees, 2 krants Sicca; that during the minority of Gopal Kishen Rae and Gobind Chunder Rae, their mother, Soondrea Chowdrain, in the year 1240, through the collusion of the other defendants, recorded the jumma of her share at 451 rupees, 7 annas, 9 gundas, 2 cowrees, 10 krants, from which time the rent was paid in that proportion, but on reaching their majority the plaintiffs discovered the difference which existed, namely, the sum of 52 rupees, 12 annas, 16 gundas, 1 cowree, $1\frac{1}{2}$ krants for each year, which they now seek to recover.

Deb Narain Chuckerbuttee and the other defendants replied that the jumma of the talook alluded to was, according to a former decree of Mr. Day, fixed at 4,869 rupees, 1 anna, 5 gundas Sicca, of which a 4 annas share belonged to Deb Narain Chuckerbuttee and others, and a 9 annas 13 cowrees share to Abbass Allee, Indad Allee, and Meer Goolam Inam, and a 2 annas, 16 gundas, 3 cowrees share to Rughoonath Rae; that on the 24th Assin 1240, Soondrea Chowdrain, the mother of Gopal Kishen, with reference to the entire jumma just mentioned and to her 2 annas 15 gundas share in the zemindaree, recorded the jumma of the 9 annas 13 cowrees share of the talook at 258 rupees, 8 annas, 11 gundas, 1 cowree, 11 krants, and the 4 annas share at 112 rupees, 13 annas, 17 gundas, 2 cowrees, 2 krants, and gave them confirmatory grants to that effect,

which were subsequently confirmed by Gobind Chunder Ræ and Gopal Kishen Ræ, in compliance with their request, on the 5th Bysack 1249, according to which rates the shares of the plaintiffs have been calculated in all summary suits and the revenue realized; that in the same manner Ramkanye Chowdree and Unoopoorna, other sharers in the zemindaree, had reduced the jumma of their respective shares and given grants confirmatory of the same.

The plaintiffs, in their replication, denied the jumma as stated by the defendants, and the grant which they were said to have given them, and declare that the jumma of 5,438 rupees, 6 annas, 1 gunda Sicca, had been fixed by the Sudder Court.

The principal sudder ameen, with reference to a decree of a former principal sudder ameen, dated the 19th January, 1841, was of opinion that the jumma of the entire talook was shewn to be 5,438 rupees, 3 annas, 6 gundas, 1 cowree, and that the mother of the plaintiffs had no power to reduce it, and in the absence of documentary evidence on the part of the defendants in support of their assertion, and there being no doubt of the existence of the balance claimed, he gave a decree for the plaintiffs, for 1,168 rupees, 1 anna, 10 pic, and costs.

The appellants observed that the jumma of the 2 annas 15 gundas share of the zemindaree, according to Mr. Day's decree, would be 451 rupees, 3 annas, 19 gundas, 0 cowree, $\frac{1}{2}$ krant, and objected to Buduroonnissa, Meer Fuzzul Kureem, and Meer Ubbee Abdoolla being released from responsibility in the case; they declared also that their documents were produced before the principal sudder ameen but not received, and, after the appeal had been taken up, filed in court two settlement papers and two grants signed by Soondrea Chowdrain, dated the 24th Assin 1240, and two letters from Gobind Chunder and Gopal Kishen, approving of the same, dated the 5th Bysack 1249, and adduced oral evidence in support of their execution, and subsequently filed a copy of a summary decision of the collector, dated the 21st Aughun 1256, in favor of Gourmunee Debea and others, the farmers, against Deb Narain Chuckerbuttee and others, for rent claimed at the same jumma as was mentioned in the documents alluded to.

The respondents commented upon the fact of the appellants never having produced their documents, although the case was pending in the principal sudder ameen's court for one year and a half, and remarked upon the contradictory nature of the evidence adduced, as well as the discrepancy in the excuses of the appellants in the first instance, and in their petition, dated the 27th Jyte, respecting the non-production of their documents, inasmuch, as in the former case they declared the documents were forthcoming, but not received by the principal sudder ameen, and in the latter case they account for their non-production by their having been filed in a butwara case in the civil court some long time ago: the respondents observed, further,

that the summary decision alluded to could not affect their claims, as the farmers had no authority to reduce the jumma.

It seems that the settlement and grant, signed by Soondrea Chowdrain for the 4 anna share of the talook, dated the 24th Assin 1240, were filed in a butwara case, pending in this court in the year 1836, but not the letter said to have been signed by Gopal Kishen Rae and Gobind Chunder Rae for the 4 annas share, approving of the same, nor were any of the papers connected with the 9 annas share of the talook filed in any court, so that there was no difficulty in producing these last documents before the principal sudder ameen: even supposing Soondrea Chowdrain did really give the grant alluded to, she had no power to do so to the injury of her sons during their minority. With reference, however, to the contradictory nature of the evidence adduced, I have doubts of its authenticity, and still greater doubts as to the documents said to have been signed by Gopal Kishen Rae and Gobind Chunder Rae, for nothing has been produced to show that, subsequent to the 5th Bysack 1249, the respondents have collected revenue themselves, or made any arrangements with others, according to the jumma inserted in those documents abovementioned,—and the copy of the summary decision filed by the appellants is of very recent date, some months even after the appeal was admitted, and while the amount of the jumma was still in abeyance, the suit of the respondents having been instituted on the 23rd August 1845, corresponding with the 8th Bhadoon 1252, and is of no avail in this case. It is clear from a decision of a former principal sudder ameen, dated the 19th January 1841, that the jumma of the entire talook was as stated by the respondents (plaintiffs,) and no reason is assigned why there should have been any reduction of the jumma in favor of the share of the appellants, and if, as declared by the appellants, Mr. Day's jumma was correct, there was no occasion to receive any grant at all from the zemindars on that account. I agree therefore with the principal sudder ameen as to the jumma he has decreed, but as I see no reason why Meer Ubbee Abdoolah should have been excluded from responsibility, I amend his decree in that respect. The appeal is decreed on that account alone, and the principal sudder ameen's order amended, and as the appellants, notwithstanding the repeated opportunities which have occurred, have utterly failed to substantiate their assertions in a proper manner, they must be answerable for the costs of appeal.

THE 7TH JANUARY 1850.

No. 4 of 1849.

Regular Suit.

Hossenooddeen Chowdree, son of Mahomed Shuffee Chowdree, and Shurfoonnissa Khatoon *alias* Chand Beebee, wife of Meer Monshur Allee, and Nayan Beebee, wife of Mahomed Bassur Chowdree, daughters of Mahomed Shuffee Chowdree, and Sree Muttee Khanum, daughter of Meer Monshur Allee, deceased, Plaintiffs,

versus

The Commissioner of the Soondurbuns, the Collector of Backergunge, the Commissioner of the Alipore Division, and Monabooddeen Chowdree, son of Sheik Jellal, and Atabooddeen Chowdree, and Matabooddeen Chowdree, son of Monabooddeen Chowdree, and Nussurooddeen Chowdree, Defendants.

THIS suit was instituted by the plaintiff, for possession, and as settlement with them, of an 8 annas, 2 gundas, 1 cowree, 2 krants, 8 teels share in mouzah Gyanpara, laying their damages at 50,000 rupees. They represented that their ancestor, Mahomed Shuffee Chowdree, in the year 1203-4, obtained a talookdarce pottah from the former zemindars of pergunnah Bazoorgoomedpore for some land in Ramna Banna, the greater part of which was jungle, according to certain boundaries described, and expended on his own account a considerable sum of money, in destroying the wild animals and bringing the jungle land into cultivation; that in the year 1205, the entire pergunnah was sold and purchased by Government, and Mahomed Shuffee's pottah was upheld by the naib appointed on the part of the collector, from which time to the year 1228, Mahomed Shuffee Chowdree was in possession; that in consequence of the collector having taken the estate into his own management, Mahomed Shuffee Chowdree petitioned the Board of Revenue, who observed that, in consequence of cases pending between some of the zemindars and Government, he (Mahomed Shuffee Chowdree) could not have his pottah, but they directed the collector to give him a settlement of 650 droons of land at a jumma of rupees 4,063-2 for a period of five years, that is from 1228 to 1232, and Mahomed Shuffee's talookdarce rights in joar Ramna Banna were clear and undisputed: that in the year 1234, on the death of Mahomed Shuffee Chowdree, the plaintiffs and Nussurooddeen Chowdree, one of the defendants, succeeded as his heirs and were in possession of that joar till the year 1237: that in the year 1238, on a representation from the commissioner of the Soondurbuns, they were ousted from their estate for a period of ten years and even then were obliged to sue the Soondurbuns commissioner in the civil court for the settlement to be effected with them; that after this case was adjusted by a compromise and their rights acknowledged, a settlement pottah was given to Atabooddeen and Matabooddeen for the Gyanpara land, which was

quite unjust, as no one but the plaintiffs themselves had any right whatsoever to the settlement, as being connected with joar Ramna Banna; that Mahomed Shuffee had formerly given an ousut talookdaree pottah to Monabooddeen, the father of Atabooddeen and Matabooddeen, for this very Gyanpara land, and in like manner had given similar pottahs to other persons for other portions of land: that as all these lease-holders had been made subservient to them as talookdars, it was singular that a separate settlement should be effected with Atabooddeen and Matabooddeen: that they do not question the proprietary right of Government to the Gyanpara land, but merely claim the right of settlement on the grounds of its forming part of joar Ramna Banna as can be proved by the maps of the surveyors: that as Nussurooddeen Chowdree would not join them in this suit, they have been obliged to include him as a defendant.

The commissioner of the Soondurbuns replied that the plaintiffs, as heirs of Mahomed Shuffee Chowdree, obtained a settlement of talook Ramna Banna, on the 28th November 1844; that the Gyanpara land had no connection with Ramna Banna, but was resumed under Section 13, Regulation III. 1828, as Soondurbuns land: that neither the ancestor of the plaintiffs nor they themselves ever cultivated one spot of that land, or were ever in possession, so that their claim after such a lapse of time was contrary to law: that the Government, under Regulation III. 1828, had the power to settle the land with whom they pleased, and accordingly on the 19th April 1832, Atabooddeen and Matabooddeen received authority to cultivate some portion of the land, and subsequently in the year 1845, had a talookdaree pottah assigned to them.

The reply of Matabooddeen for himself, and the sons of Atabooddeen was to the same purport: he insisted that the order of the Soondurbuns commissioner was conclusive under Clause 2, Section 13, Regulation III. 1828; that the land in question was marked quite distinct from Ramna Banna in the map of Captain Hodges, revenue surveyor, and again in the map of the assistant surveyor, Mr. Mullins; that as the plaintiffs should have appealed to the special commissioner's court, their plaint was barred by Regulation III. 1828, as well as by lapse of time, and cited the case of Hurgobind Ghose, decided by the Sadler Court in 1847, as a case in point.

The replication of the plaintiffs was to the effect that the land of Gyanpara was connected with their hereditary talook Ramna Banna, pergunnah Bazoorgomedpore, the zemindaree of Government, as would appear from a map prepared in the year 1808 by Ramkant Bonerjeea, ameen, and from the tenor of the Soondurbuns commissioner's proceedings, dated the 16th March 1830, resuming the land in question: it would also appear to belong to Ramna Banna as being to the west of the Beeskhalee river.

There was no necessity for removing this case from the principal sudder ameen's court, on the plea of the maps and other documents

being recorded in the English language, for the first point to consider, without reference to the documentary evidence adduced by each party in support of their respective statements, was, whether this court has jurisdiction in the matter. The plaintiffs acknowledge the Government to be the proprietor of Gyanpara, but still claim the right of settlement on the grounds of its being included in Ramna Bamna: this is, however, the very point which makes the interference of this court questionable, for Ramna Bamna is part of pergunnah Bazoorgomedpore, a decennially settled estate, whereas Gyanpara was resumed as Soondurbuns land under Regulation III. 1828, Section 13, under which enactment the Government could assign the land to whom they pleased, and no objections appear to have been preferred to the special commissioner.

Although the plaintiffs do not expressly sue to reverse the decision of the resumption court, their object is in reality a reversal of it, for they claim a settlement of the land in question on grounds directly opposed to the decision of that Court; the case, therefore of the Sudder Board of Revenue *versus* Delawar Alee is, in my opinion, a case in point, with reference to which and Clauses 1 and 2, Section 13, Regulation III. 1828, this court has clearly no jurisdiction. The plaint therefore must be dismissed with costs.

Decided by the Sudder Court
on the 4th March 1846.

THE 23RD JANUARY 1850.

No. 91 of 1848.

Appeal from Gobind Chunder Bidyaruttun, Moonsiff of Cowcally, dated the 22nd June 1848.

Mehroolla, (Objector,) Appellant,

versus

Joykishen Bose, (Plaintiff,) and Mahomud Suffee, (Defendant,) Respondents.

THIS suit was instituted by the plaintiff to recover the sum of rupees 56, annas 13, rent, principal and interest, from the defendant for the last six months of the year 1250, to the month of Assin 1253, on account of his ryottee holding assessed at a jumma of rupees 16, within his neem howla in howla and ousut talook called Joykishen Bose, Ruttun Kishen, &c., talook Meer Abdool Kureem, kismut Samtor, in the 11 annas 10 gundahs share of pergunnah Sulleemabad.

Mahomed Suffee denied having any connection with the plaintiff in kismut Samtor, declared that he had an ousut neem howla at a jumma of Company's rupees 13, in the 4 annas share of Mehroolla's neem howla in howla Rajnarain Kur, mozaffut Besun and Buxoolla, talook Ram Ram Sein, &c., kismut Beej Khan, and when Mehroolla

sued him and his sharers for rent, the plaintiff unknown to him made use of his name and objected to the attachment under Regulation V. 1812: that the case was struck off and his (defendant's) property ordered to be sold on account of Mehroolla's claim.

The plaintiff, in his replication, alluded to the pottah he had given to the defendant and the kuboolecut he had received, dated the 15th Maugh 1242, at a jumma of rupees 16, which rent had been paid up to the month of Assin.

Mehroolla and others gave petitions, supporting the claim of the defendant.

The moonsiff referred to the kuboolecut filed by the plaintiffs and the evidence adduced in its support, to a copy of a petition, dated the 28th Kartik 1250, given by the defendant, in which he complained against Mehroolla, and acknowledged his responsibility to the plaintiff on account of this very ryottee holding in the plaintiff's neem howla in kismut Santor, to the neem howladaree pottah filed by Mehroolla signed by Besun and Buxoolla, in which the residence of the former was stated to be in Dasor Cattee, and to his having ascertained from enquiries that there was no such person as Besun at that place, and considering the balance of rent, the responsibility of the defendant, and his possession, were fully established, he gave a decree in plaintiff's favor, distinctly declaring that his order did not affect the dispute relative to kismut Beej Khan and Santor.

The appellant observed that the name of Joykishen, by way of recognition, was written upon the petition filed in the collector's office, that the collector rejected it, and ordered the rent to be paid to Mehroolla, and the plaintiff should therefore have sued to reverse that order. It was remarked by the respondent that there was no necessity for him to reverse the collector's order, as kismut Beej Khan was mentioned by that officer, that the petition alluded to was attested by other mooktars besides himself, and that the question at issue was simply the responsibility of the defendant for his rent, or otherwise. As the matter in dispute is purely one of rent, and the respondent's (plaintiff's) claim was fully established, I see no reason to disturb the moonsiff's order, which is confirmed, and the appeal dismissed with costs.

THE 23RD JANUARY 1850.

No. 99 of 1848.

Appeal from the decision of Mr. Jackson, Moonsiff of Bowfaul, dated the 17th June 1818.

Aluk Chunder Scin, (Defendant,) Appellant,

versus

Sabo Beebee, wife of Nyan Khoondkhar, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff to cancel a sale effected in execution of a decree, and to establish her right in a 15 annas

share of a neem howla, laying her damages at 160 rupees. It appeared from her statement that her father, Syud Matab, had a neem howla in howla Ram Bullub Rae, joar Dooleea, talook Meer Koorban Ali and Beelée Hafiza, tuppah Sooltanabad; that after his death her mother, Rajib Beebec, was in possession, and making a division of the property, a 15 annas share came to her and 1 anna share to Syud Fakeer according to the Mahomedan law; that in executing a decree of one Kalcenath Rae against Fuddee Alee to which Moonshee Muneerooddeen had succeeded, a petition was given to sell this neem howla as being the property of this Fuddee Alee, and a remonstrance on her part filed in the moonsiff's court; that in consequence of delay on her part, her petition was struck off the file on the 6th June 1846, and the neem howla sold on the 2nd November of that year, and purchased by Aluk Chunder for 160 rupees, who was not, however, in possession; that as Fuddee Alee, according to the Mahomedan law, had no right in this neem howla, she has been compelled to institute this suit, making Syud Fakeer a defendant, in consequence of his reluctance to join her in this suit.

The reply of Aluk Chunder was to the effect that, after the death of Nyan Khoondkar, his son, Fuddee Alee, succeeded to his rights in the neem howla and paid the rent, that the property was purchased under instructions from Moonshee Muneerooddeen, in whose name he (Aluk Chunder) had taken kuboolents and granted receipts and was in possession.

Syud Fakeer supported the plaintiff's claim.

No documents were filed, and the moonsiff, merely from the report of an ameen, considering that Fuddee Alee possessed no sort of right in the neem howla, decreed in plaintiff's favor against the property of Muneerooddeen and his heirs, releasing the other defendants.

The appellant alluded to the miscellaneous case in which the moonsiff, from the fact of Fuddee Alee's right being established, directed the sale of this very neem howla, and to the absence of any notice to the heirs of Muneerooddeen, deceased. As the appellant was released from all responsibility, it does not appear clear how he is entitled to appeal. I observe, however, that the moonsiff, by a proceeding, dated the 17th February 1848, admitted the heirs of Muneerooddeen in his room, but decided the case without issuing any notice to them. The decision, therefore, as in the case of Ishur Chunder Doss, decided by the Sudder Court on the 31st January 1848, must be considered irregular and premature. The appeal is decreed, the moonsiff's order reversed, and the case returned to that officer, who, after issuing the usual notice to the heirs of Muneerooddeen, will decide the case upon its merits. The amount of stamp paper on which the appeal is engrossed will be refunded to the appellant.

THE 25TH JANUARY 1850.

No. 102 of 1849.

Appeal from the decision of Moonshee Mufeezooddeen, Moonsiff of Mendigunge, dated the 28th January 1848.

Assurooddeen and Ameerooddeen, (Defendants,) Appellants,

versus

Ajeemooddeen and Seerajooddeen, (Plaintiffs,) Respondents.

THE plaintiffs sued for a kubooleut at a jumma of Company's rupees 17, 4 annas, 6 pie, 8 krants, for 10 gundas, 1 cowree, 1 krant of ryottec land, after deductions on account of a neem howla of the defendants called Imamooddeen and Ameerooddeen, connected with howla Kaleepershad Rae, formerly purchased by Madhoree Sing, and subsequently by the plaintiffs in niouzah Neeamutpore, in Meer Burkutoolla's share, talook Syed Amanoola, in the 9 annas share of pergunnah Dakhin' Shabazpore.

The defendants, Assurooddeen, Ameerooddeen, and Sumeeroodeen, sons of Ataoolla Moonshee, replied that a neem howladaree settlement was given by Madhoree Sing, the auction purchaser of the howla, on the 27th Jyte 1248, to Sumeeroodeen in the name of Emamooddeen, and to Ameeroodeen, son of Fateeoolla, for 16 gundas, 1 cowree, 2 krants of land altogether, at a jumma of 11 rupees, 4 annas, 3 pie; that Assurooddeen and the other Ameeroodeen had no connection with the land, for the possession of which, moreover, the plaintiffs had sued in a separate suit; that the notice issued by the plaintiffs did not contain their names, but that of Emamooddeen, and no specification of the amount of land measured was inserted.

The plaintiffs, in their replication, denied the settlement alluded to by the defendant, and observed that they had merely sued for a kubooleut for the extent of land ascertained to be in the possession of the defendants, and had sued in a separate case for 1 arra 10 kanees of land, which the defendants retained forcibly in their possession; that after the death of Madhoree Sing, Ramdeen Sing was his heir, from whom they had purchased the howla in question.

A petition was filed by one Lalloo Sing on the part of the heirs of Madhoree Sing, supporting the statement of the defendants, and throwing suspicion upon the plaintiff as acting in collusion with Ramdeen Sing.

The moonsiff, simply with reference to the report of an ameen and some dakhilas filed by the plaintiffs, considered their right to the howla established, and gave a decree to the extent of the land and jumma mentioned in the settlement filed by the defendants.

The appellants, after repeating the objections urged before, alluded to the Sudder Court's decision, dated the 15th April 1848, (case of Doe Chand Lall, petitioner, in which a plaint for a kubooleut was considered untenable,) as a bar to the suit instituted by the respondents.

Independent of the irregularity of the suit as noticed by the appellants, there is nothing to shew their responsibility, nor has any documentary evidence been adduced in support of the alleged purchase of the howla from Ramdeen Sing, the heir of Madhoree Sing. The appeal is therefore decreed, the moonsiff's order reversed, and the claim nonsuited with costs.

THE 25TH JANUARY 1850.

No. 106 of 1849.

Appeal from the decision of Moonshee Mufeezooddeen, Moonsiff of Mendingunge, dated the 28th June 1848.

Assurooddeen and Ameerooddeen, sons of Ataoolla Moorishee,
(Defendants,) Appellants,

versus

Ajeemooddeen and Seerajooddeen, (Plaintiffs,) Respondents.

THIS suit was instituted to obtain a kubooleut at a jumma of 12 rupees, 13 annas, 10 pic, 8 krants, for 7 gundas of land, after deductions, ascertained to be in the possession of Emamooddeen and Panjut Alee, on account of their neem howla. The reply of the defendants was to the same purport as in the preceding case No. 102, and they alluded to the settlement given by Madhoree Sing for 15 gundas 2 krants of land in all, at a jumma of 8 rupees 13 annas. The moonsiff gave a decree according to the amount of land and jumma inserted in the settlement. As this case is precisely similar to the preceding case No. 102, the same order is applicable. The appeal is decreed, the moonsiff's order reversed, and the claim of the plaintiffs nonsuited with costs.

THE 25TH JANUARY 1850.

No. 103 of 1849.

Appeal from the decision of Moonshee Mufeezooddeen, Moonsiff of Mendingunge, dated the 28th June 1848.

Assurooddeen, Ameerooddeen, and Sumcerooddeen, (Defendants,) Appellants,

versus

Ajeemooddeen and Seerajooddeen, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs for possession, with mesne profits, of 1 c. 2 g. 2 c. of land, of which they had been dispossessed, situated in their howla Kalcepershad Rae, formerly the

purchased property of Madhoree Sing, and subsequently their own, in mouzah Neeainutpore in Meer Bux Kutoolla's share, talook Syed Amanoola, in the 9 annas share of pergunnah Dakhin Shabazpore, laying their damages at rupees 281, 4 annas.

The defendants, Assurooddeen, Ameerooddeen, and Sumecrooddeen, denied the allegation of the plaintiffs, and observed that a neem howladaree settlement had been given on the 12th Aughun 1246, by the howladar, Madhoree Sing, in the name of Emamooddeen and Panjut Alce, for 15 g. 2 k. of land in all, at a jumma of rupees 8, 13 annas, with which Sumecrooddeen was not connected, and another settlement for 16 g. 1 c. 2 k. in all of land, at a jumma of rupees 11, 4 annas, 3 pic, on the 27th Jyte 1248, was given by the same person to Sumecrooddeen, in the name of Emamooddeen, and to Amecrooddeen, the son of Futceoola, with which Assurooddeen and the other Amecrooddeen had no concern: that the plaintiffs had misstated the description of the lots and had sued twice for the very same land.

The plaintiffs, in their replication, denied the fact of the settlement said to have been given by Madhoree Sing, and alluded to their two separate suits for kubooleuts.

The moonsiff, relying upon the evidence adduced by the plaintiff, both oral and documentary, and the report of an ameen, considered their dispossession proved, and gave a decree accordingly.

The appellants observed that the ameen never went near the land, and therefore could not have measured it, and no enquiries had been made as to the fact of the former howladar having possession of the land in question on his own account or not, and that the moonsiff had decreed to the respondents possession of the very same land for which, in two separate cases, he had directed them (appellants) to give kubooleuts, according to the neem howladaree settlement filed by them. No dependance can be placed upon the report of the ameen, who, by his own shewing, does not appear to have made any correct measurement of the land.

As from the tenor of the replication of the plaintiff, which is similar to that filed in case No. 102, the land under discussion would appear to be more or less the very same land as is mentioned in the previous cases No. 102 and No. 106, for which the moonsiff had directed kubooleuts to be given by the appellants, the moonsiff's order in this case is manifestly absurd and the claim of the plaintiffs irregular. The appeal is therefore decreed, the moonsiff's order reversed, and the claim of the respondents nonsuited with costs.

THE 28TH JANUARY 1850.

No. 120 of 1849.

Appeal from the decision of Mr. Jackson, Moonsiff of Bowfaul, dated the 5th August 1848.

Surmoonnissa Khatoon, wife of Meer Abbass Alee Chowdree, deceased, and Buduroonnissa Khatoon, wife of Meer Ubdool Kureem, and Meer Ubdool Mujeed, guardian of Meer Fuzzul Kureem and Meer Ubbée Abdoola, (Defendants,) Appellants,

versus

Bhugwan Chunder Rae and Nund Coomar Rae, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiff to recover the sum of rupees 299, annas 10, pie 2, krants 5, principal and interest, as rent, after deducting certain collections from the year 1247 to the year 1253, due on account of a howla called Goolam Imam Chowdree, in their ousut talook in talook Ramkisth Chuckerbuttee, joar Santery, pergunnah Chunderdeep, that from the year 1249 to the month of Assin 1252, the ousut talook had been given in farm to Gunganarain Mookerjeea, with an assignment of the rents to Ram Seeta Debea, but as the farmer had filed his accounts current, shewing the whole rent to be due from the howla, they had been compelled to sue the howladars.

Surmoonnissa Khatoon and the other defendants denied the alleged farm, and declared that they had paid the gomashita of the plaintiffs at different times the sum of 231 rupees, for which they hold receipts: that the plaint was irregular, in consequence of the minority of one of the plaintiffs, Nundcoomar, and had been instituted entirely out of spite.

The plaintiffs, in their replication, denied the minority asserted by the defendants, and observed that the tuhseeldar and not their parents was in the habit of granting dakhilas.

Gunganarain Mookerjeea supported the statement of the plaintiffs relative to the farm.

The moonsiff, discrediting the dakhilas, in consequence of their being supposed to be written with fresh ink upon old paper, and considering that there was discrepancy in the evidence of the witnesses adduced in their support, gave a decree in favor of the plaintiffs, releasing Gunganarain, Ram Seeta, and Nubkishen from all responsibility.

The appellants urge the validity of their dakhilas, and observe that, if there had been a *bonâ fide* farm, the farmer was the person to claim the rent from them.

I do not perceive any cause for suspecting the dakhilas, as mentioned by the moonsiff while, on the other hand, the papers of account for the years 1246, 1247, and 1248, filed by the

respondents, are undoubtedly open to suspicion, and have been made to appear unnecessarily older than the date they are intended to exhibit. It appears, moreover, that the assignment to Ram Secta and the farming lease have been written on the 1st Bysakh 1249, and the stamp paper purchased on the 28th December 1841, or 15th Poos 1248, and the names of the witnesses on those documents were not all written at the same time, as is evident on inspection. Besides which, there is no satisfactory reason assigned for the farmer not having made any collections, for, if the farm were a *bonâ fide* transaction, the respondents should have sued the former and not the howladars. As I consider, therefore, the statement of the farm to be put forth merely to throw suspicion upon the genuineness of the dakhilas, I decree the appeal, reverse the moonsiff's order, and dismiss the claim of the plaintiffs with costs."

THE 28TH JANUARY 1850.

No. 100 of 1849.

Appeal from the decision of Gobind Chunder Bidyaruttun, Moonsiff of Cowcolly, dated the 27th June 1848.

Buxoolla, Kumur Alee, and Oomed Alee, (Appellants,) Defendants,

1 *versus*

Jankee, wife of Sheebnarain Dutt, and Jugmohun Dutt, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiff to recover the sum of rupees 25, annas 6, pie 5, as rent from the year 1251 to the year 1254, on account of the howla of the defendants called Rubecoolla and Monabdee, situated in their ousut talook Ramkunye Ghoo, in kismut Ashwar, in the 8 anna share of Kishen Gobind Dutt's talook purchased by Lukheernarain Chowdree in the name of Golukchunder.

Buxoolla, Kumur Alee, and Oomed Alee denied the existence of the ousut talook, and declared that the rent of the howla was paid in the first instance to Kishen Gobind Dutt and his heirs, and then to Lukheernarain Bose, and subsequently to Juggutnarain and Hurmohunee Chowdrain, the former the proprietor of the 9 anna share, and the latter of the 7 anna share of the talook, and on the sale of Juggutnarain's share the rent was paid to Hurnath Dutt, the purchaser.

Hurnath Dutt gave a petition, supporting the assertion of the defendants.

The plaintiffs, in their replication, alluded to a case No. 304, in which Kumur Alee, one of the defendants, had sued Hurnath Dutt in the moonsiff's court, and admitted the existence of their ousut talook, and also to a case No. 289, in which Adoo Ram Busnub was plaintiff.

The moonsiff considered the existence of the ousut talook and the balance of rent duly established, and, with reference to the

cases cited by the plaintiffs, and the report of his peshkan, gave a decree in favor of the plaintiffs.

The appellants repeat the pleas urged before and observe that the respondents could not claim rent until their ousut tenure had been clearly proved.

The respondents have adduced no pottah or other satisfactory document regarding the creation of their ousut talook, as the foundation of their claim for rent, but it is clear that the plaint of Adoo Ram Busnub in the case alluded to, was decreed by the moonsiff from the fact of this ousut talook being in existence, and was upheld in appeal by the principal sudder ameen, and it does not appear that those orders have been reversed by higher authority. Under these circumstances, the moonsiff's order must be confirmed, and the appeal dismissed with costs. •

ZILLAH BEERBHOOM.

PRESENT: F. CARDEW, ESQ., JUDGE.

THE 5TH JANUARY 1850.

Case No. 198 of 1849.

*Regular Appeal from a decision passed by the Moonsiff of Doqbrajpore,
Moulvee Atta Alee, August 8th 1849.*

Manik Das, (Defendant,) Appellant,

versus

Bisto Chunder Chuckurbuttee and others, (Plaintiffs,) Respondents.

THIS suit was instituted on the 5th September 1848, to recover the sum of Company's rupees 74-1-1, being arrears of rent, with interest, due from 1248 to 1253 B. S., on 20 beegahs 19 gundas of land, having a jumma of rupees 55-4-7, situated in mouzah Puchiara, lot Kishtonuggur.

The plaintiffs, the proprietors of the estate, stated that the jumma was formerly held by Bindrabun Das, and had been recorded in the *zemindaree sirristah* since Bindrabun Das's death in 1249, in the name of his son, the defendant, Dhurmo Das, that certain payments of rent specified in the plaint had been received from Manik Das, Muthoor Das, and Ram Ghose, and, as these men were in possession, they included them amongst the defendants to meet objections.

The defendant, Manik Das, (appellant,) in answer, stated that Bindrabun Das, in 1243, made over to him 10 beegahs 14 cottahs of the land, the subject of claim, at a jumma of rupees 19, payment of which was made through him (Bindrabun Das) up to the year 1246, when the plaintiff's naib, Khitronath Mookerjea, promised to make a transfer of names in the *zemindaree sirishtah*, from which period he (defendant) had paid the rent himself, to the full amount of rupees 19 per annum, along with the rent of land held in his own name, under receipts granted by the naib, and therefore the claim against him was altogether untenable.

The plaintiffs, in their reply, denied that any such transfer had been made, and also the naib's power to make it without their permission.

The defendant, Dhurmo Das, subsequently filed an answer admitting Manik Das's statement. The other defendants did not appear.

The moonsiff was of opinion that the naib had no power, with reference to Section 59, Regulation VIII. of 1793, to make the alleged

transfer without authority from the zemindars, for the division of a jumma, the lands of which may be unequal in quality, was detrimental to their interests; that it did not appear from the answer that any actual transfer had been made, and no proof of such had been adduced; and he therefore decreed the amount of claim against Dhurmo Das alone, as being the responsible party.

The defendant, Manik Das, appeals from the decision, on the ground that it was detrimental to his interests, and objects that the moonsiff ought to have declared him to be entitled to hold the lands made over to him by Bindrabun Das, at a separate jumma of rupees 19, independently of Dhurmo Das. But as no proof has been adduced to show that any such partition of the original jumma had been made with, or even without, the plaintiffs' authority, the objection is untenable, and the decision I therefore confirm.

THE 5TH JANUARY 1850.

Case No. 200 of 1849.

Regular Appeal from a decision passed by the Moonsiff of Ookhra, Gobind Chund Chowdhree, September 4th 1849.

Rameshur Guttuk, (Defendant,) Appellant,

versus

Gopeenath Bundopadhyaya, (Plaintiff,) Respondent.

THIS suit was instituted on the 17th August 1848, to recover possession of beegahs 13-1-9 of land, situated in mouzah Koonwurdih, with mesne profits for 1254 and 1255: value for the plaintiff Company's rupees 196-4-4.

The plaintiff stated that he had obtained a decree of court against Manik Chunder Rae Chowdhree, deceased, the mother of Kumulee Thakoorance, and brother-in-law of Kishoree Thakoorance, defendants, in execution of which, he attached beegahs 48-1-3 of resumed rent-free land, bearing a sudder jumma of rupees 15-1-7, agreeably to a settlement in perpetuity entered into by the said Manik Chunder Rae Chowdhree with the Government; whereupon the defendant Kumulee Thakoorance, as the representative of the deceased, sold to him the same for the sum of rupees 104-12, including the amount of the decree under a deed of sale, bearing date the 12th Srabun 1254, which has been duly registered; that the defendant Rameshur Guttuk had, after the attachment, preferred a claim to beegahs 13-1-9 of the said land, and now refuses to give him possession thereof; and this constituted the cause of action.

The defendant, Rameshur Guttuk, in answer, stated that he purchased the disputed beegahs 13-1-9 of land, from Manik Chunder Rae Chowdhree himself, under a deed of sale, dated the 15th Jeth 1252; that the plaintiff had been put forward as a man of straw by one Nubodeep Chuturaj, who was the prime mover in the suit; and

that the alleged purchase, on the part of the plaintiff, was collusive, and he (defendant) had objected to it as such, when the deed of sale was presented for registry.

The defendants, Kunulce Thakooranee and Kishoree Thakooranee, filed an answer in support of the plaint.

The moonsiff was of opinion that the plaintiff's purchase was proved, by the evidence adduced, to be authentic; and that the plaintiff, who appeared in court in person, had instituted the suit in his own right; that the plaintiff's deed of sale having been duly registered according to law, it invalidated the deed of sale produced by the defendant, Rameshur Guttuk, which had not been registered, since both of the deeds bore date subsequently to the passing of Act XIX. of 1843; that the latter deed of sale, moreover, appeared, for reasons fully detailed in the decision, to be a forgery, and he therefore decreed the suit; and being of opinion myself, on perusal of the record and petition of appeal, that no sufficient grounds have been shewn to impugn the correctness or justness of the decision, I hereby confirm the same under Clause 3, Section 16, Regulation V. of 1831.

THE 12TH JANUARY 1850.

Case No. 207 of 1849. •

Regular Appeal from a decision passed by the Moonsiff of Doobrajapore, Moulree Atta Alee, September 6th 1849.

Jye Nurayun Mookhopadhya and Tyluknath Chukurbuttee,
(Defendants,) Appellants,

versus •

Lukhee Nurayun Mookhopadhya, Indur Nurayun Mookhopadhya,
and Kalee Purshad Mookhopadhya, (Plaintiffs,) Respondents.

THIS suit was instituted on the 18th September 1848, to recover a moiety of certain hereditary property situated in mouzah Bhurt-pore, comprising the estate of Taramunee Dibya and Oma Muyee Dibya, deceased. The plaint was valued at 61 rupees.

Taramunee Dibya and Oma Muyee Dibya, who died childless in the months of Chyete 1254, and Bysakh 1255 B. S., respectively, were the daughters of Gudadhur Mookhopadhya, deceased, the eldest of three brothers, who divided their patrimony between them many years ago. The defendants, Gunga Nurayun, Jye Nurayun, Nund Doolal, and Rameshur Mookhopadhya, are the sons and grandsons of Sreedhur, the second brother; and the plaintiffs are the sons of Digumber, the third brother.

The plaintiffs rest their claim on the law of inheritance, alleging that the deceased Taramunee and Omamuyee Dibya were in possession of the disputed property up to the time of their deaths, and that the defendants, Gunga Nurayun and others, mentioned above,

in collusion with the defendant Tyluknath Chuckurbuttee, the farmer of the mouzah, had refused to give them (plaintiffs) a share.

The defendant, Jye Nurayun, in answer, did not deny the plaintiffs' right to succeed to a moiety of the deceased's estate, but he objected to the claim in respect to the bulk of the property, stating that the rent-paying land, comprising beegahs 5-10-16, was given to his brother Ram Nurayun, deceased, (the father of the defendants Nund Doolal and Rameshur) by Gudadhur's widow, Anund Muyee Dibya, upwards of thirty years ago; that the rent-free garden comprising 1 beegah, had been sold by the deceased Taramunee and Oma Muyee to Tyluknath Chuckurbuttee, to defray the expenses of their mother's shraddhu, or funeral obsequies; that Taramunee and Oma Muyee had appointed him (defendant) as manager of their household affairs; and he had sold the homestead comprising 10 cottahs to the same person, to defray the expenses of Oma Muyee's shraddhu; and at the same time he made a gift of the 5 cottahs of rent-free land to the officiating brahmuns, and that the tamarind tree, tar tree, and tuft of bambôos were his own.

The defendant, Tyluknath Chuckurbuttee, filed an answer to the same effect. The other defendants did not appear.

The moonsiff decreed the suit to the plaintiffs, on the grounds that the claim was fully proved, and that the defendants had failed to substantiate their statement, and I can find no sufficient reasons for interference with the decision. The defendants merely produced a deed of sale said to have been executed on the 19th Jeth 1255, by Gunga Nurayun and Jye Nurayun, in favor of Tyluknath Chuckurbuttee, on account of the homestead, and its three subscribing witnesses, whose evidence is far from satisfactory; and it is not shewn that the vendors had any authority to alienate the property for the purpose stated, without the consent of the plaintiffs. I therefore confirm the decision under Clause 3, Section 16, Regulation V. of 1831.

THE 14TH JANUARY 1850.

Case No. 209 of 1849.

Regular Appeal from a decision passed by the Moonsiff of Soory, Koolodanund Mookurjia, August 29th 1849.

Narayun Mundul Chowdhree, (Defendant,) Appellant,

versus

Moocheeram Naik, Gour Chunder Naik, Nirunjun Naik, and Gudaee Naik, (Plaintiffs,) Respondents.

THIS suit was instituted by the plaintiffs, who are four brothers, living in family partnership, on the 19th September 1848, to recover from the defendant the sum of Company's rupees 199-2-11, principal and interest, on a bond alleged to have been executed by him in

favor of the plaintiff, Gour Chunder Naik, under date the 20th Assin 1252, in adjustment of a former debt of 147 rupees.

The defendant, in answer, acknowledged the bond, and pleaded that the former debt amounted to 33 rupees only; that he was to have received 114 rupees in cash, but the plaintiffs only gave him 25 rupees of that amount, the balance he never got; and that he had repaid them, in paddy and rice, the sum of 75 rupees.

The moonsiff found the plaintiffs' statement of the case proved by the evidence of the subscribing witnesses to the bond, which evidence the defendant failed to refute, and deeming the evidence of the four witnesses produced by the defendant in support of the alleged payment in grain unsatisfactory, he decreed the suit to the plaintiffs in full of their claim.

On perusal of the record and petition of appeal, I am of opinion that no sufficient grounds have been shewn to impugn the correctness or justness of the decision, and I therefore confirm the same, under the provisions of Clause 3, Section 16, Regulation V. of 1831.

THE 16TH JANUARY 1850.

Case No. 212 of 1849.

Regular Appeal from a decision passed by the Moonsiff of Doobrajapore, Moulvee Atta Alee, September 6th 1849.

Krishto Chund Mitree and Rajkoomaree Dasya, (Defendants,) Appellants,

versus

Gurubec Gowalin and Madhub Gope, heirs of Puddolochun Gope, deceased, and Jugunnath Gope, (Plaintiffs,) and Becharam Missur, Biprochurn Missur and others, (Defendants,) Respondents.

THIS suit was instituted on the 23rd December 1848, to recover the value of crops illegally distrained, Company's rupees 50-0-3, and as much again, as damages.

The plaintiffs stated that they held in chuck Rumaipore, mouzah Sreepore *alias* Cheenpie, 16 beegahs 10 cottahs of land, at a jumma of rupees 17-12, under a pottah granted by the lakhirajdars, Becharam Missur and Biprochurn Missur, defendants; that on the 24th Agrahon 1250, the defendant, Muddun Mohun Mitree, styling himself agent on the part of the defendants, Krishto Chund Mitree and Rajkoomaree Dasya, attached the crops of the said land, with the assistance of a *mushooree* peon deputed under Regulation XX. of 1817, to recover a balance of rent alleged to be due from the defendant, Ram Nurayun Mitree, upon which plaintiffs furnished security before the commissioner for the sale of distrained property, who ordered the crops to be released, but the distrainers disregarding the order, appropriated them of their own authority. The plaintiffs added that they had no connexion whatever with the distrainers.

The defendant, Ram Nurayun Mitree, in answer, stated that chuck Rumaipore belonged to himself, Krishto Chund Mitree, Rajkoomaree Dasya, and other shareholders; that in 1250, he was put in possession of Krishto Chund Mitree's and Rajkoomaree Dasya's shares, amounting to 11 annas, 14 gundahs, 2 cowrees and 2 krants, under agreements executed by him in their favor, and on the 25th Chyte 1252, the plaintiffs executed an agreement in his favor for the land indicated in the plaint. That the distraint was made by Muddun Mohun Mitree, on the part of all the other shareholders, for arrears of rent due from him (defendant); and he paid Krishto Chund Mitree's and Rajkoomaree Dasya's demand, and the crops were all released with the exception of some paddy and straw to the value of rupees 7-4-6, which were taken on account of Neetanund Das and others, 3 annas and 4 gundahs shareholders, whom the plaintiffs had not sued, as they should have done.

The plaintiffs, in reply, denied the truth of the facts in the answer, and stated that they had no claim against the alleged 3 annas and 4 gundahs shareholders, Neetanund Das and others, who had no hand or part in the distraint.

The defendants, Krishto Chund Mitree and Rajkoomaree Dasya, (appellants,) filed an answer to the same effect as Ram Nurayun Mitree's answer, stating, that they distrained the crops because Ram Nurayun Mitree had failed to pay the rent due to them under his agreements.

The defendants, Becharam Missur and Ram Tunoo Missur, appeared by vakeel, but filed no answer.

The moonsiff recorded that it was proved by the evidence of the plaintiffs' witnesses, that the plaintiffs cultivated the land, the subject of dispute, on the part of Becharam Missur and Ram Tunoo Missur, and paid rent in the preceding years to them; that the defendants, Mitrees, had produced no kubooleet, or agreement, on the part of the plaintiffs, and had altogether failed to make good their statement: in fact some of their witnesses deposed that the Missurs were in possession, and that it was a case of conspiracy on the part of the Mitrees, who were a numerous family, got up to injure the plaintiffs. He therefore decreed to the plaintiffs the value of the crops as proved in evidence, namely, rupees 44-14-4, and as much again, as damages against Krishto Chund Mitree, Muddun Mohun Mitree, Ram Narayun Mitree, and Rajkoomaree Dasya.

It appears that the witnesses cited by the defendants, Mitrees, to whom the moonsiff alludes, as having deposed that the Missurs were in possession, were examined at the plaintiffs' request, after the defendants had declined having their evidence taken down. This was quite irregular; but I can find no grounds for interference with the decision arrived at by the moonsiff. There is not a particle of proof that the appellants were in possession, receiving the rent of the land, the subject of dispute: and on the other hand, the plaintiffs' statement,

that they paid the rent to the Missurs is satisfactorily established. I therefore confirm the decision under the provisions of Clause 3, Section 16, Regulation V. of 1831.

THE 16TH JANUARY 1850.

Case No. 211 of 1849.

*Regular Appeal from a decision passed by the Moonsiff of Doobrajapore,
Moulvee Atta Alee, September 6th 1849.*

Krishto Chund Mitree and Rajkoomaree Dasya, (Defendants,)
Appellants,

versus

Kartik Chunder Race, (Plaintiff,) and Becharam Missur, Biprochurn
Missur, and others, (Defendants,) Respondents.

THIS suit was instituted on the 23rd December 1848, to recover the value of crops illegally distrained, Company's rupees 19-6-5, and as much again as damages.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff are similar to those recorded under the case No. 212 of 1849, decided this day, and I confirm the moonsiff's decision, awarding to the plaintiff rupees 16-10-9, as the value of the distrained crops, and as much again as damages on similar grounds.

THE 16TH JANUARY 1850.

Case No. 213 of 1849.

*Regular Appeal from a decision passed by the Moonsiff of Doobrajapore,
Moulvee Atta Alee, September 6th 1849.*

Krishto Chund Mitree and Rajkoomaree Dasya, (Defendants,)
Appellants,

versus

Sonatun Gope, (Plaintiff,) and Becharam Missur, Biprochurn Missur
and others, (Defendants,) Respondents.

THIS suit was instituted on the 23rd December 1848, to recover the value of crops illegally distrained, Company's rupees 27-14-1, and as much again as damages.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff are similar to those recorded under the case No. 212 of 1849, decided this day, and I confirm the moonsiff's decision, awarding to the plaintiff rupees 23-15-4, as the value of the distrained crops, and as much again as damages on similar grounds.

THE 16TH JANUARY 1850.

Case No. 214 of 1849.

*Regular Appeal from a decision passed by the Moonsiff of Doobrajapore,
Moulvee Atta Alee, September 6th 1849.*

Krishto Chund Mitree and Rajkoomaree Dasya, (Defendants,) Appellants,

versus

Radhanath Gowala and Deenonath Gowala, (Plaintiffs,) and Becha Ram Missur, Biprochurn Missur and others, (Defendants,) Respondents.

THIS suit was instituted on the 23rd December 1848, to recover the value of crops illegally distrained, Company's rupees 27-14-1, and as much again as damages.

The circumstances of the case, the pleadings of the parties, and the decision of the moonsiff are similar to those recorded under the case No. 212 of 1849, decided this day, and I confirm the moonsiff's decision, awarding to the plaintiffs rupees 23-15-4, as the value of the distrained crops, and as much again as damages on similar grounds.

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THE 17TH JANUARY 1850.

Case No. 220 of 1849.

*Regular Appeal from a decision passed by the Moonsiff of Doobrajapore,
Moulvee Atta Alee, October 29th 1849.*

Sheik Fyzoo Mundul, (Defendant,) Appellant,

versus

Jugubundhu Dutt, (Plaintiff,) Respondent.

THIS suit was instituted on the 5th May 1849, to recover the sum of Company's rupees 63-8, on a bond, dated the 26th Assin 1254 B. S., executed by the defendant in favor of the plaintiff, in the sum of 91 rupees, made payable in *goor* or raw sugar.

The plaintiff stated that he had received *goor* from the defendant to the value of rupees 38-12.

The defendant, acknowledging the bond, pleaded that he had delivered to the plaintiff 11 *maps*, 6 *seers*, and 12 *chittacks* of *goor*, valued at rupees 92-15-9, for which he held a *hathchitta*.

The moonsiff decreed the suit to the plaintiff in full of his claim. He rejected the defendant's plea without enquiry, because the quantity of *goor* entered in the *hathchitta* filed by him, namely, 10 *maps*,

7 *sulces*, 16 *seers*, and 12 *chittacks*, did not correspond with the quantity mentioned in the answer, stating that the document which was written on plain paper, being at variance with the answer, was quite unworthy of confidence, and there was therefore no use to return it to the defendant, under the Circular Order of the 7th January 1842, to enable him to have a proper stamp affixed to it.

This summary mode of proceeding is quite irregular. The moonsiff should have called upon the defendant to explain the discrepancy, and have allowed him to correct the answer, should the discrepancy have originated in a mere mistake; but he never put any questions to him on the subject as far as the record shows. I therefore reverse the decision as being incomplete, and send back the case for re-trial, with reference to the foregoing remarks.

THE 23RD JANUARY 1850.

Case No. 191. of 1849.

Regular Appeal from a decision passed by the Moonsiff of Kundera, Mirza Ushkuree Fikrut, August 11th 1849.

Ishur Chund Koondoo, (Plaintiff,) Appellant,

versus

Rameshur Mundul, (Defendant,) Respondent.

THIS suit was instituted on the 29th May 1849, to recover the sum of Company's rupees 6-10, principal and interest, on a bond alleged to have been executed by the defendant in favor of the plaintiff, under date the 6th Srabun 1255 B. S.

The defendant acknowledged the bond, pleading that he had received no consideration for it. He stated that he had stood security for a balance of rent due from Alung Mundulanee, which was assigned by the gomashitah of the mouzah to the plaintiff, in payment of a debt, and the plaintiff having importuned him for the money, he made over to him two cows belonging to Alung Mundulanee, and subsequently executed the bond for the amount, rupees 6, conditionally to the plaintiff's returning the cows, which he had not done.

The plaintiff, in his reply, denied the facts in the answer, stating that they were false, and that the bond was executed on account of a payment in cash.

The moonsiff dismissed the suit on the evidence of the plaintiff's own witnesses, who supported the defendant's answer, and on failure of proof that the condition, under which the bond was written, relative to the return of the two cows, had been observed; and on the same grounds I confirm the decision, and dismiss the appeal with costs.

THE 23RD JANUARY 1850.

Case No. 223 of 1849.

*Regular Appeal from a decision passed by the Moonsiff of Amduhra,
Gholam Buttool, September 11th 1849.*

Radhabullubh Raee, (Defendant,) Appellant,

versus

Khetronath Acharje, (Plaintiff,) Respondent.

THIS suit was instituted on the 23rd September 1848, to recover the right of irrigation of 3 beegahs of land from a tank.

The moonsiff decreed the right claimed against the defendant, Radhabullubh Raee, (appellant,) and others, with costs of suit to the amount of rupees 4-1.

The defendant, Radhabullubh Raee, appeals from the decision on the value of rupees 4-1, objecting to being saddled with costs; but as the right claimed was awarded against him, the order, in respect to the costs, is quite correct, and the same is hereby confirmed.

THE 28TH JANUARY 1850.

Case No. 66 of 1849.

Regular Appeal from a decision passed by the Moonsiff of Soory, Kooladanund Mookurjea.

Muhabharuth Bural and Ram Nursing Dhur, (Plaintiffs,) Appellants,

versus

Nirunjun Chowdhree, Sardapurshad Chowdhree, Bhugubuttee Dasya and Nubung Dasya, guardians of Sudanund Chowdhree, minor, and Bukronath Chukurbuttee, (Defendants,) Respondents.

THIS suit was instituted on the 7th February 1848, to recover the sum of Company's rupees 226-7, principal and interest, on a balance of account.

The plaint set forth that the plaintiff, Muhabharuth Bural, carried on business at Deocha in iron, the plaintiff Ram Nursing Dhur being his gomashlah: that Sulagyuran Chowdhree (deceased,) inhabitant of Gunpore, had opened an account with them through his gomashlah, Ram Lochun Chukurbuttee (deceased,) under an engagement to supply iron on advances of money made to the latter, and the business was conducted in this manner for several years; that on an adjustment of accounts at the end of 1250, a balance was struck in the plaintiffs' favor to the amount of Company's rupees 210-1-5; further advances and deliveries of iron, as per particulars given,

were made in 1251, and on the 4th Phalgun of that year, after the decease of Sulagyuram Chowdhree, which took place in the preceding month, the accounts were again made up and the balance, which now amounted to Company's rupees 166-7, was signed in the presence of witnesses by the gomastah, Ram Lochun Chukurbuttee, in the name of his master, Sulagyuram Chowdhree, under an agreement to deliver iron in liquidation of the same at certain rates, but the agreement not having been kept, the plaintiffs brought this action.

The defendants, Nirunjun Chowdhree and others, heirs of Sulagyuram Chowdhree, in answer, objected, that the particulars and date of the commencement of the alleged business had not been set forth in the plaint. They denied that Sulagyuram Chowdhree had had any transactions with the plaintiffs; they denied also that Ram Lochun was ever employed by him as gomastah, and that they had any thing to do with the claim.

The defendant, Bukronath Chukurbuttee, the son of Ram Lochun Chukurbuttee, in answer, acknowledged that his father was employed by Sulagyuram Chowdhree as gomastah for eight or nine years, preceding the year 1251, but objected that the debt claimed was due from Sulagyuram Chowdhree, and could not be demanded of Ram Lochun Chukurbuttee, who acted only in the capacity of a servant.

The moonsiff dismissed the claim. He recorded as the reasons of his decision, that the plaintiffs were unable to prove that the advances had been made to Sulagyuram Chowdhree through Ram Lochun Chukurbuttee; that the mere signing of the balance of account by Ram Lochun Chukurbuttee in the name of Sulagyuram Chowdhree as deposed to by the witnesses, was insufficient, for the plaint shows that it was done after Sulagyuram Chowdhree's death in the absence of his heirs, which looked like collusion with the plaintiffs: if it were true that Sulagyuram Chowdhree had taken the money, and there was a balance against him, he would have made up the account himself, or, on his death, his heirs would have done so; that the evidence of two of the witnesses who deposed that in Chyte, seven or eight years ago, Sulagyuram Chowdhree authorized the plaintiff to make advances on iron to his gomastah, Ram Lochun Chukurbuttee, holding himself responsible for any balances, was inadmissible, for that fact was not mentioned in the plaint nor in the reply, and the account-books, produced by the plaintiffs, showed that the alleged business commenced long before the period mentioned by the witnesses, namely, on the 16th Assin 1243; that the plaintiffs could produce no document to show that Sulagyuram Chowdhree had carried on business with them, and the person produced to authenticate the account-books acknowledges that none of them had been signed by Sulagyuram Chowdhree, and therefore the account-books were no proof against him; that it was clear from the plaint also, that Sulagyuram Chowdhree had nothing to do with the advances, and

as Ram Lochun Chukurbuttee had not signed the accounts in his own name, and had not held himself responsible for the balance claimed, which moreover the plaintiffs' vakeel acknowledged to be due from Sulagyuram Chowdhree alone, Ram Lochun Chukurbuttee also could not be held responsible.

This case is nearly similar to one recorded in the decisions of the Sudder Dewanny Adawlut for April 1848, Gour Chunder, plaintiff, *versus* Hoolassee Shah and others, defendants. In that case, as in this, the accounts on which the claim was made had been signed by the agent in the name of his principal; no written authority had been granted by the latter accrediting the former to the plaintiff, and yet the claim was decreed against the principal on the general evidence of the case.

In this case the plaintiffs have produced witnesses, who depose to having been present when Sulagyuram Chowdhree accredited his gomashtah, Ram Lochun Chukurbuttee, to them. They have produced their account-books extending from the year 1243 to 1251, all kept in the most regular order, which have been proved by the writer, Radhabullubh Chatoorjya, who deposes that the entries against Sulagyuram Chowdhree's name were all made by Ram Lochun Chukurbuttee himself, who struck the balance, and signed it in the name of his employer at the end of each year; other witnesses depose to Ram Lochun Chukurbuttee's having signed the final account on which the claim has been brought; to his having been in charge of a smelting furnace and smithery at Dhamra, belonging to Sulagyuram Chowdhree; and to his receiving advances in Sulagyuram Chowdhree's name, on account of iron supplied to the plaintiffs; all of which satisfactorily establish the claim in my opinion, for I can find no grounds for discrediting the evidence.

The reasons given by the moonsiff for rejecting the evidence of two witnesses, who are said to have been present when the gomashtah was accredited to the plaintiffs, are untenable, for the plaint is sufficiently explicit on the point, and as to the time, the witnesses only spoke to the best of their recollection; but besides those two witnesses, the writer of the account-books was also present on the occasion, and he gave the correct year and date, a fact which the moonsiff overlooked.

In refutation of the claim no evidence whatever has been produced by the heirs of Sulagyuram Chowdhree.

I therefore reverse the moonsiff's decision, and decree the amount of claim against the estate of the deceased Sulagyuram Chowdhree, with full costs; and I release the heir of Ram Lochun Chukurbuttee, who was merely the agent of Sulagyuram Chowdhree, from responsibility.

THE 29TH JANUARY 1850.

Case No. 74 of 1849.

*Regular Appeal from a decision passed by the Moonsiff of Gopalpore,
Gopeenath Das, March 21st 1849.*

Dwarkanath Udhikaree, Ramanath Udhikaree, Jusudumundun
Udhikaree and Parbuttee Soondree Debya, (Defendants,) Appel-
lants,

versus

Muthooranath Udhikaree and Deenonath Udhikaree, (Plaintiffs,)
Respondents.

THIS suit came before me in appeal on the 16th March 1848, when it was remanded to the moonsiff for further investigation and re-trial. See Decisions of this Court for 1848, page 184. •

The claim involves a right of way; and the moonsiff was instructed, on the case being remanded, to enquire whether the plaintiffs had a prescriptive right to the cart road, the subject of dispute, or, in other words, whether they had had uninterrupted enjoyment of it for a period of twelve years.

The moonsiff accordingly examined further evidence, namely, four witnesses on each side, and considering it proved by the evidence of the plaintiffs' witnesses, that the plaintiffs had a prescriptive right to the road, and that the evidence on the other side was contradictory, as to the original road alleged to have been made use of by the plaintiffs, he gave judgment again in their favor.

It appears that the road in question is claimed as passing between two homesteads, formerly belonging to Kunuk Munee Thakoranee, and Huree Samunt, respectively. One-half share of the former was acquired by the defendants by purchase, on the 2nd Agrahon 1242 B. S., and the other half share on the 25th Agrahon 1248; and since the first date it has lain unoccupied, and in consequence the walls and enclosures have fallen into decay. In the belief that if the road had existed at the time of the first purchase in 1242, when the homestead was occupied by its late owner, the remains of double walls, or hedges or enclosures of some kind or other, would be still visible, I directed the local ameen, through the moonsiff, to proceed to the spot and ascertain the point, and the result is, that, whilst there are palpable remains of a mud wall on one side of the road claimed, not a trace of an enclosure or fence on the other side is to be seen; and the former existence of a road in the place indicated is rendered improbable by the fact that it terminates in a drain, or watercourse, enclosed by two walls, only two and a half cubits apart, and consequently not passable for carts; moreover, in the definition of the boundaries in the deeds of sale of Kunuk Munee Thakoranee's homestead, which is situated on the west of Huree Samunt's homestead, the latter is given as the eastern boundary, the disputed road not being mentioned; and as the parties to this suit, who are all related to each

other, were on amicable terms at the time the deeds were executed, there is no reason to suppose that the boundary was wrongly described.

On the above considerations, I can place no confidence in the statement made by the four witnesses produced by the plaintiffs after the case was remanded, to the effect that the road was open before the date of the defendants' purchase of Kunuk Mune Thakoranee's homestead, and the statement is the more liable to suspicion in that the evidence of three of the witnesses has been disallowed before in other cases before the courts. I, therefore, regarding the claim as not proved, reverse the moonsiff's decision, and decree the appeal to appellants, with costs in both courts.

THE 30TH JANUARY 1850.

Case No. 165 of 1849.

*Regular Appeal from a decision passed by the Moonsiff of Doobrajapore,
Moulree Atta Alee, July 5th 1849.*

Kubeer Dutt, (Defendant,) Appellant,

versus

Mudhoo Mune Dasya, (Plaintiff,) Respondent.

THIS suit was instituted on the 6th July 1848, to recover the sum of Company's rupees 238-10-11, principal and interest, on a *kurarnama*, or bond, bearing date the 2nd Bysakh 1255 B. S.

The plaintiff stated, in her petition of plaint, that she had for a long time past frequently lent money to the defendant, without a written acknowledgment, which he always faithfully repaid; that she lent him in this way 200 rupees in the month of Agrahon 1253, under the promise that he would return it in three or four months, but he failed to keep his engagement on this occasion; and on the 2nd Bysakh 1255, he executed in her favor a *kurarnama* for rupees 234, being the amount of the loan with interest to that date, which he had not paid.

The defendant, in answer, denied the claim. He stated that the plaintiff was the wife of a petty retail shopkeeper, and she never saw 200 rupees in her life; that the claim had been got up by Ramjy Rooj and Ramkunnee Rooj, with whom he (defendant) had had a quarrel regarding a road, and who had threatened to do all in their power to injure him; that on the 10th or 11th Bysakh 1255, Ramjy Rooj sent the plaintiff and her brother, Wukeel Sen, to his (defendant's) house to demand payment of money she pretended to have lent him; and on his remonstrating with her, she acknowledged, in the presence of respectable people, that she had lent the money not to him (defendant) but to her own son-in-law, Gopal De; that he on this ordered them to leave his house: and afterwards Ramjy Rooj forged the deed on which the present action has been brought.

The plaintiff, in her reply, stated that, in consequence of her having heard that the defendant who was her relation, was much involved in debt to other parties, she did go with her brother Wukeel Sen, in the month of Chyte to the defendant's house, and demanded payment of the money she had lent him, but he denied having received it. She then consulted her son-in-law, Gopal De, in whose presence the money had been lent, and it was through his interference that the defendant was induced to execute the kurarnama, which he did three or four days afterwards, on a stamp paper purchased in his own name. She denied that Ramjy Rooj and Ramkunace Rooj had any thing to say to the institution of the suit.

The moonsiff decreed the suit in favor of the plaintiff, on the grounds that the defendant had failed to make good his answer, the evidence of his witnesses being contradictory and unworthy of confidence, and that the loan of the money and subsequent execution of the deed were satisfactorily proved by the evidence adduced by the plaintiff.

The defendant produced in the lower court four witnesses, namely, Wukeel Chund Sen, the plaintiff's brother, Sonatun Sen, Gungadhur Rooj, and Gopal Rooj; of these witnesses, Wukeel Sen supports the plaintiff's statement; Sonatun Sen says that he had heard that the defendant had borrowed the money from plaintiff, and had subsequently executed a kurarnama in her favor; Gungadhur Rooj's evidence is not material; and the only one who gave evidence in support of the answer is Gopal Rooj, who is said to have been present when the plaintiff demanded money of the defendant, and he gives the defendant's version of the story; but I can find no reason for believing him in the face of the evidence on the other side, which satisfactorily supports the claim, in my opinion, and I therefore confirm the decision of the lower court, and dismiss the appeal with costs.

THE 31ST JANUARY 1850.

Case No. 141 of 1849.

*Regular Appeal from a decision passed by the Moonsiff of Ookhra,
Gobind Chund Chowdhree, May 29th 1849.*

Rookhee Kanth Chukurbuttee and Tarachurn Chongdar, (Plaintiffs,)
Appellants, •

versus

Ukhuyram Ghutuk and Ununtram Ghutuk, (Defendants,)
Respondents.

THIS suit was instituted by the plaintiffs (appellants) as the *seputneedars* of mouzah chuck Gopalmath, a nankar muhal, included with lot Shamsoondurpore, on the 6th April 1848, corresponding with the 25th Chyte 1254 B. S., to recover from the defendants the sum of Company's rupees 5, being an arrear of rent for 1254, on

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5 beegahs of land, at a jumma of 9 rupees, under a *kuboolcut*, or agreement, alleged to have been executed by the latter in their favor, under date the 7th Srabon of that year.

The defendants denied the *kuboolcut*, and..pleaded that the 5 beegahs of land were held by them at a *mokururee*, or fixed jumma of Sicca rupees 3.

The moonsiff dismissed the claim. He had no confidence in the three witnesses produced in support of the *kuboolcut*, on account of discrepancies in their evidence, the particulars of which he details; nor in the accounts filed by the plaintiffs, which appeared to have been got up for the occasion, and considered the defendants' statement borne out by the receipts for rent of former years produced by them, which showed that the amount of jumma heretofore paid was Sicca rupees 3 only, and it was acknowledged in the plaint that 4 rupees had been received from them for the year of complaint.

I can find no grounds for interference with this decision. Irrespectively of the discrepancies pointed out by the moonsiff, which are regarded in the reasons of appeal as trivial, there is nothing in the evidence to ensure belief that the assertion made by the witnesses, that the defendants executed the *kuboolcut*, is true; there is nothing to show under what circumstances the defendants were induced to submit to an enhancement of rent, for there is no doubt that the amount heretofore paid is correctly stated by them, or what led to the necessity of this action, so soon after the deed was executed. I therefore confirm the decision, and dismiss the appeal with costs.

ZILLAH BEHAR.

PRESENT: C. STEER, ESQ., OFFICIATING ADDITIONAL JUDGE.

THE 2ND JANUARY 1850.

No. 38 of 1848.

Appeal against the decision of Syud Tufuzzul Hossein Khan, Sudder Ameer of Gya, dated the 15th September 1848.

Musst. Musseehee, (Plaintiff,) Appellant,

versus

Musst. Tilko, widow of Nunhoo Saho, Deonath Saho, Dumber Dut Saho, and, on his demise, Musst. Sunnicheree, his widow, for self and as guardian of Nund Lal Saho, Sookun Saho, and Manick Saho, Ponaie Saho, and Ahmud Allee, and, by a supplementary plaint, Musst. Kadiroonnissa, and, after her death, Ahmud Allee her son, (Defendants,) Respondents.

Meer Chunmun, Claimant.

THIS suit was instituted on the 22nd of April 1845, to recover possession of a third of mouza Inactpoor Dhunsingrah, pergunnah Bhulawur, according to a recent settlement, valued at rupees 191-1-2-4, and to recover rupees 103-3-9-8, wasilaut from 1248 to 1252 F., and to obtain a mutation of names in the collector's books, to the exclusion of that of Ahmud Allee, defendant.

The plaint states that the above share of the estate in question was bought by the plaintiff according to a deed of sale, dated the 3rd of Kartick 1223 F., from Musst. Wahida, a former proprietor. Plaintiff subsequently gave the farm of it on an advance to the defendant Deonath Saho. That, on the resumption of the estate and in the settlement which took place in consequence, Ahmud Allee, plaintiff's husband, in collusion with the defendants, representing himself as the malik, obtained a settlement and got his name recorded as such on the collector's books, and that Deonath, Dumber Saho, and Ponaie Saho have since been in possession.

Deonath Saho, defendant, replies that he was formerly the farmer of the estate, but that he threw up the farm at the bidding of the plaintiff, that the sum due to him on account of the balance of the advance was paid to him by Ahmud Allee, plaintiff's husband, who afterwards gave his brother, Nunhoo Saho, a mortgage, with a con-

ditional sale of the property. That as regards himself he has no concern with it, but asserts that the suit is brought at the instigation of Ahmud Allee, with a view to defraud his creditors.

Dumber Saho and Ponaie Saho, defendants, reply and say, that they have no concern with the matter at issue.

Musst. Tilko replies that the plaintiff's account of the purchase is false; that she, plaintiff, and her husband, are on good terms and live together; that Ahmud Allee, with the knowledge and free consent of his wife, had his name registered as malik, after which he took rupces 615-11-2 from Nunhoo Saho, her husband, and gave him a mortgage of the property; that the mortgage money not having been paid her husband before her, and since his death, the defendant, his widow, has been in possession; and that this suit is a device of Ahmud Allee's to cheat her out of the mortgage money.

Ahmud Allee replies in support of the plaintiff, adding that his name was entered as a malik by mistake. That from the time of settlement, Deonath Saho and his brothers have been in possession of the estate.

Sunnicheree, widow of Dumber Saho, replies in the same terms her late husband did.

Kadiroonnissa replies and says that the suit is undervalued, that all the maliks have not been made parties that plaintiff ought to have sued to upset the settlement.

Meer Chummun, claimant, petitions and says, that this property was entered in a schedule given by him of property belonging to Ahmud Allee, and that the present suit is a trick of his.

The moonsiff is of opinion that the settlement made with Ahmud Allee shews that he was a malik, as the proprietorship is fully enquired into and first established before any one is allowed to engage. That from the time of the resumption of the muhal, the plaintiff never brought forward her claim, and that what she now relates of a disagreement between her and her husband is an invention. That the deed of sale is not registered, nor does it bear the kazee's signature. That of the respectable witnesses named in the bond, not one is alive. That one witness deposes that Musst. Wahida, giving the deed of sale from behind a purda, acknowledged with an audible voice that she had received the money. That this fact is enough to stamp the whole story as a falsehood; for what lady of rank would be heard to speak in a loud voice before strange men? Besides this, another witness states that the deed of sale was made over by Musst. Wahida, and the money paid to her in sight of all the witnesses. Under these circumstances, the right of the plaintiff is not proved. That although the deed of mortgage filed by Musst. Tilko, is open to the same objections as the deed of sale, in its not having been registered or signed by the kazee, that document is fully proved and Musst. Tilko is in possession in virtue of it. The moonsiff accordingly dismisses the suit.

In appeal, it is urged that the defendants admit the plaintiff's right. That although the transaction is fictitious, the mortgage bond even acknowledges this. That the duplicity of Ahmud Allee is fully proved by the roobukaree of the additional judge, dated the 27th of May 1843. That if appellant was now in league with Ahmud Allee, in the way it is contended, his name would have been entered in the same way, as malik of her other estates. That as to what the moonsiff states about no claim having been preferred by the appellant, that is very true, but he should have recollected that the appellant had urged that the transaction was not known to her, how therefore could she have objected to it?

JUDGMENT.

It appears to me that the sudder ameen has very needlessly thrown away a great deal of argument, for the purpose of proving what is of no consequence in this case, that the deed of sale produced by the appellant (plaintiff) is not genuine. All enquiry or remark on this head was needless, as, the appellant's right and recent possession being admitted by all parties, it matters nothing on what particular title she claims to hold. But here, lest my views should be misunderstood, and it should be thought that I coincided in condemning the deed, I feel it but just to the appellant to state that I by no means think the deed is open to the objections raised against it. When all parties agree that the appellant was in possession at the time of settlement in 1840, and it is clear that her title is one originating in herself, and not obtained by inheritance, there is nothing to discredit, but every thing in favor of what appellant alleges, that she acquired it by purchase. And then, of course, *some* deed was drawn out, why may not the deed produced be *that very* deed? For my part, I see no reason whatever to doubt either its identity or validity. But this, the peculiar title, is not the point at issue in this case. The suit is to recover the proprietary right, and to obtain the registration of the appellant's name as a proprietor, of a third of the whole of mouzah Inaetpoor Dhunsingrah. Now I have observed that all parties allow that the appellant was in possession till 1840, when a new settlement having to be made on the resumption of the estate, the appellant's husband got his name recorded as the proprietor of the said portion, and immediately gave a mortgage of it, on a conditional sale to Nunhoo Saho, the late husband of the first defendant. The appellant now sues to recover her right, alleging that she was not aware that her husband had acted such a treacherous part, and he too admits that it was by an error that his name was recorded as a proprietor. Whether the appellant did, or did not know of the settlement, or whether she was or was not a party to the mortgage, or whether she and her husband have now colluded for ends of their own, in denying the appellant's connection with that transaction, are questions distinct from the present issue, and cannot affect the claim of proprietary right. Under these cir-

cumstances, it is my opinion that the appellant is entitled to be acknowledged as the proprietor of a third of mouzah Inaetpoor Dhunsingrah, and to have her name recorded as such in the collector's register of mutations, to the exclusion of that of her husband; and to this extent I decree her claim, in reversal of the orders of the lower court. As to wasilaut, the plaintiff must sue separately for that, as her right to it depends upon the question whether she had or had not any connection with the mortgage transaction, the merits of which, or the rights of parties concerned in which, nothing contained in this decree is to be considered as affecting. As to costs I award every fraction, both of appellant and respondents, exclusively against Ahmud Allee, who, whether he has colluded with the appellant, or with the respondents, is equally guilty, and it is owing to his double conduct that the parties have been brought into this suit.

THE 2ND JANUARY 1850.

No. 24 of 1848.

Appeal against the decision of Syud Tufuzzul Hossein Khan, Sudder Ameen of Gya, dated the 30th June 1848.

Ram Lal and Nerotun Roy, ijaradars, (Defendants,) Appellants in the suit of Jugjeewun Lal, (Plaintiff,) Respondent,

versus

The Appellants and Kalee Churn, Choonnee Lal, Choa Lal, and Mewa Lal, Defendants.

THIS suit was instituted on the 10th of April 1847, to annul the farm and to recover the deed of lease of an 8 anna share of mouzah Surdeea Kullan, pergunnah Koottombeh. Suit valued at 751 rupees.

The plaintiff states that Kalee Churn, Choonnee Lal, Choa Lal, and Mewa Lal, defendants, sold to him 8 annas of the vallage of Surdeea Kullan, and 27 beegahs of land in the village of Surdeea Khoord, and that he, plaintiff, gave a farm of the same to Durriao Sing, from 1252 to 1256 F. That on Durriao Sing falling into arrears, the plaintiff realized them by process of attachment, on which Nerotun Roy, through his son, Ram Lal, brought an action in the moonsiff's court of Aurungabad, to reverse the said attachment, on the plea that he held the said property in both villages in farm on a considerable advance, Kalee Churn and the other defendants admitting what Nerotun Roy stated, paid into the moonsiff's court the amount of his advance; but Nerotun Roy refused to receive the money, or to vacate the farm, or to restore the deed of lease. On which the moonsiff dismissed his suit to reverse the attachment, but on appeal that order was upset, and the attachment was thereby cancelled. Nerotun Roy then set up his uncle, Oochhahul Ram, as his under-farmer, and attached the khureef crops of the villages in question for alleged arrears of rent, whereupon the plaintiff

brought a suit under Regulation V. of 1812, to contest the attachment, which the deputy collector reversed. The plaintiff is therefore in possession. Nerotun Roy has no title to the farm as his advance is in deposit. This suit is therefore brought to compel the said Nerotun to receive the money, vacate the farm, and restore the title deeds.

Ram Lal, defendant, replies that he is the farmer of the property in dispute which is still in his possession, and he cannot be ousted until his lease expires. That in the cases mentioned, it will be seen that in one case, when the plaintiff made the distraint, it was reversed, and as regards the attachment made by the defendant against Oochlahul Ram, the defendant has made a regular suit before the moonsiff of Aurungabad to contest the deputy collector's award, which is still pending. Nerotun Roy has nothing to do with the farm held by the defendant.

Nerotun Roy replies that he has no interest in the matter at issue.

The sudder ameen is of opinion that, by the conditions of the deed of lease, the defendant, Ram Lal, is bound to restore the farm on payment of the peshgee, but he is entitled to the profits of the farm from the beginning to the end of the lease. The sudder ameen therefore decrees the case in favor of the plaintiff, provided that within two months he pays into court the principal of the advance, and interest thereon at 12 per cent. per annum from the date of the decree to the end of the lease. The costs he awards against the parties respectively.

Ram Lal, the defendant, urges, in appeal, that the sudder ameen has not rightly understood the terms of the lease, and that the defendant is not sufficiently compensated for the loss of the profits of the farm by 12 per cent. interest on the amount of his advance, out of which the Government revenue has also been deducted

JUDGMENT.

The terms of the deed of lease are quite clear and distinct, that an option rests with the proprietors of annulling the farm at any time they may wish to do so within the term mentioned in the lease, by the repayment of the peshgee and the yearly profits for the whole period, *minus* the Government revenue. The exception taken against the decision by the appellant, on the ground that 12 per cent. per annum on the amount of his advance does not repay him for the loss of the profits of the farm, is illogical and futile, as, to award him more than this, would be to give him a higher rate of interest than the law allows. The judgment of the sudder ameen is, therefore, perfectly correct, except in the matter of costs, which ought, in conformity to the usual practice of the courts, to have been given against the appellant. I uphold the order of the lower court with this alteration, the appeal being dismissed with costs.

THE 2ND JANUARY 1850.

No. 25 of 1848.

Appeal against the decision of Syud Tufuzzul Hossein Khan, Sudder Ameen of Gya, dated the 30th June 1848.

Ram Lal and Nerotun Roy, ijaradars, Appellants, in the suit of
Jugjeewun Lal, (Plaintiff,) Respondent,

versus

The Appellants, and Kalee Churn, Choonnee Lal, Choa Lal, and
Mewa Lal, Defendants.

THIS suit was instituted on the 26th May 1847, to annul the farm, and to recover the deed of lease, of 27 beegahs of land, in mouzah Surdeea Khoord, pergunnah Kootoombeh. Suit valued at 124 rupees.

This suit is between the same parties as in the foregoing case. The matter in dispute is there detailed, and the pleadings being in all particulars the same, it is sufficient to refer to the judgment therein passed. The appeal is accordingly dismissed, with costs, the decision of the lower court being upheld, except in the matter of costs, which I award against the appellants.

THE 2ND JANUARY 1850.

No. 27 of 1848.

Appeal against the decision of Syud Tufuzzul Hossein Khan, Sudder Ameen of Gya, dated the 30th June 1848.

Jugjeewun Lal, (Plaintiff,) Appellant,

versus

Ram Lal, Nerotun Roy, Kalee Churn, Choonnee Lal, Choa Lal, and
Mewa Lal, (Defendants,) Respondents.

THIS is an appeal against the sudder ameen's award of costs in the suit No. 24, this day disposed of. The decision of the lower court having in that respect been reversed, I have only to declare that this appeal be decreed, with costs.

THE 2ND JANUARY 1850.

No. 28 of 1848.

Appeal against the decision of Syud Tufuzzul Hossein Khan, Sudder Ameen of Gya, dated the 30th June 1848.

Jugjeewun Lal, (Plaintiff,) Appellant,

versus

Ramlal, Nerotun Roy, Kalee Churn, Choonnee Lal, Choa Lal, and
Mewa Lal, (Defendants,) Respondents.

THIS is an appeal against the sudder ameen's award of costs in the suit No. 25, this day disposed of. The decision of the lower court having in that respect been reversed, I have only to declare that this appeal be decreed, with costs.

THE 2ND JANUARY 1850.

No. 26 of 1848.

Appeal against the decision of Syud Tufuzzul Hossein Khan, Sudder Ameen of Gya, dated the 30th June 1848.

Ramlal, (Plaintiff,) Appellant,

versus

Jugjeewun Lal, (Defendant,) Respondent.

THIS suit was instituted on the 4th May 1847, to reverse an order of the deputy collector of Behar, dated the 6th of March 1847.

The plaintiff states that he is the farmer of 27 beegahs of land in mouzah Surdeea Khoord, and that as such he attached the property of Oochahul Roy, his under-farmer, for arrears. That attachment was annulled in the suit under Regulation V. of 1812, instituted by Jugjeewun Lal. This suit is therefore brought to reverse the order which set aside the attachment.

The defendant replies that he bought the proprietary right of the lands in question, and, according to the conditions of the lease granted by the former owners to the plaintiff, he deposited the amount of advance which the plaintiff had given for the farm, and took possession of the property, on which representation, the attachment was set aside by the deputy collector.

The sudder ameen observes that the defendant has obtained a decree for the lands involved in this suit in another case, (No. 25,) and from the papers he appeared to be in possession, the attachment was therefore illegal, and this suit, which is brought to set aside the order which pronounced it so, must be dismissed.

In appeal, the plaintiff refers to the grounds of his appeal in cases 24 and 25 of 1848.

JUDGMENT.

I see no grounds for disturbing the decision of the lower court, which is hereby affirmed, and this appeal dismissed, with costs.

THE 4TH JANUARY 1850.

No. 133 of 1848.

Appeal against the decision of Syud Mahommed Furreedooddeen, former Moonsiff of Aurungabad, dated the 21st June 1848.

Maha Rajah Hetnuraen Singh and Malia Ranee Indirjeet Koor, Appellants in the suit of Lalnath Patuck, Bhowmath Patuck and Musst. Bheekun Koor, wife of Bishnath Patuck, (Plaintiffs,) Respondents,

versus

Appellants and Girdharee Patuck, Defendants, first Claimants, Tilluckdharee Patuck, Ramsunker Patuck, and Gumbheer Patuck, second Claimant, Shunker Patuck, son of Lekhraj Patuck.

THIS suit was instituted on the 12th February 1848, to recover possession of 6 beegahs of lakhiraj lands in the village of Bahadoor-

poor, and mesne profits of the same from 1250 to 1254 F. Suit laid at 138 rupees.

The plaint sets forth that the former zemindars of the village in question granted to Sonemun Patuck and Atma Patuck jointly, 10 beegahs of rent-free land; and to Sonemun Patuck, the same parties gave 51 beegahs more. Seventeen years ago the plaintiff's purchased from Girdharee Patuck's father, one of the heirs of Sonemun Patuck, 6 beegahs out of the 10 granted to him, and Atma Patuck jointly, and up to the end of 1249 F., the plaintiffs remained in quiet possession, but in 1250 F., maha rajah Hetnuraen dispossessed them. Hence this suit for possession and wasilaut.

Girdharee Patuck, defendant, and heir of Sonemun Patuck, admits the sale by his father of the land in question, and otherwise supports the plaintiff's statement.

Maha rajah Hetnuraen Singh and maha ranee Indurjeet Kooer, defendants, reply, that the land claimed is not lakhiraj, but part of defendants' zemindaree, and has always paid rent.

The first and second claimants support the plaintiff's statement, and allege that they too held certain portions of the lakhiraj land described by the plaintiff, from which they have been dispossessed, but they have not the means to prosecute their claims.

The moonsiff decrees the suit in plaintiff's favor, observing that from a copy of a lakhiraj register, obtained from the collector's office, 61 beegahs of land in Bahadoorpore, appears recorded as lakhiraj in the names of Sonemun Patuck and Atma Patuck, and as Girdharee Patuck admits the sale, it is vain for the other defendants to dispute the claim.

Maha rajah Hetnuraen and maha ranee Indurjeet Kooer appeal, urging that, by the Circular Order of the 8th October 1844, the moonsiff was not competent to entertain such an action.

JUDGMENT.

The validity of the alleged lakhiraj tenure being the point at issue, the moonsiff was decidedly incompetent to decide the question. His order is therefore annulled, and the case remanded in order that he may refer to the judge for instructions as to what tribunal he is to transmit the case. The value of the stamp for the appeal will be refunded in the usual manner.

THE 4TH JANUARY 1850.

No. 134 of 1848.

Appeal against the decision of Syud Mahommed Furreedooddeen, former Moonsiff of Aurungabad, dated the 21st June 1848.

Maha Rajah Hetnuraen Singh and Indurjeet Kooer, Appellants, in the suit of Lalnath Patuck, Bhowanath Patuck and Musst. Bheekun Kooer, wife of Bishnath Patuck, (Plaintiffs,) Respondents,

versus

The Appellants and Nirban Patuck, (Defendants,) Appellants.

THIS is a suit instituted on the same date and similar to the preceding, the plaintiffs claiming possession as purchasers of another 6 beegahs from Nirban Patuck, another of the heirs of Sonemun Patuck. The pleadings being the same, the issue the same, and the order of the lower court the same, I remand the case on the ground and for the purpose recorded in my judgment in the case No. 133 of 1848, just disposed of. The value of the stamp for the appeal will be refunded in the usual manner.

THE 5TH JANUARY 1850.

No. 115 of 1848.

Appeal against the decision of Sheikh Kasim Allee, former Additional Moonsiff of Gya, dated the 11th May 1848.

Musst. Mungro, wife of Sheikh Rujjub, Appellant, in the suit of Jaroo and Beharee, sons and heirs of Kalloo Sahoo, (Plaintiffs,) Respondents,

versus

The Appellants and Musst. Mirricheea, wife of Peerbux, Defendants.

THIS suit was instituted on the 8th July 1847, to recover rupees 51-3-3, principal and interest of a bond, dated 11th Pous Sumbut 1893.

The plaintiffs state that their father, Kalloo Sahoo, lent Sheikh Rujjub and Peerbux, Sicca rupees 24, receiving from them a joint bond for the amount of the above date. The debt not having been liquidated in Kalloo Sahoo's lifetime, the plaintiffs, his heirs, bring this suit against the heirs of the said Sheikh Rujjub and Peerbux, but Musst. Mirricheea, the widow of Peerbux, is only sued for form's sake, as she was separated from her husband, and was living apart from him for some time before his death.

Musst. Mirricheea denies the debt, and pleads that she is not liable for her late husband's debts, as she inherited no property from him. She adds that Peerbux died on a journey, and that Sheikh Rujjub has been in Calcutta for fifteen years past, having only

once visited his home during that period, that they should therefore have jointly contracted a debt is very improbable.

Sheikh Rujjub, defendant, gives a similar answer.

The moonsiff, considering the evidence good on the part of the plaintiffs, decreed the case in their favor, exempting Mirricheea, and making Sheikh Rujjub alone responsible.

Musst. Mungro, widow of Sheikh Rujjub, appeals against this decision, impugning the justice of the decree, and objecting to the release of Musst. Mirricheea.

JUDGMENT.

The debt is proved, and the defendants' witnesses even establish it, inasmuch as it is stated by them that the debt was likely to have been compromised by Eedoo, Sheikh Rujjub's son, but one Boodhoo interfered and broke off the matter. Musst. Mirricheea has, however, been exempted on insufficient grounds; if she claim a release, she should give proof of her non-liability. I therefore reverse the order of the lower court with respect to her exemption, and remand the case, directing that evidence may be taken on this point, when the court will again decide whether Musst. Mirricheea is entitled to her release or not, and will pass its orders accordingly. The value of the stamp for the appeal will be refunded in the usual manner.

THE 7TH JANUARY 1850.

No. 148 of 1848.

Appeal against the decision of Sheikh Kasim Allee, former Additional Moonsiff of Gya, dated the 28th June 1848.

Pershad Sing, Appellant, in the suit of Goordyal Sing, (Plaintiff),
Respondent,

versus

The Appellant and Byjnath Sahae, Defendants.

THIS suit was instituted on the 3rd January 1848, to recover Company's rupees 44-14-0, principal and interest of arrears of rent, payable in cash and kind, on account of the village of Neoree Seclounjah, pergunnah Sunnout.

The plaintiff says that he held the farm of the said village from 1249 to 1253 F., jointly with Heen Sing; that according to a luggeet, or account of assessment, the sum of rupees 73-11-9 is due to them from the defendant as arrears of rent, which he will not pay. The plaintiff, therefore, sues for his share of the same with interest.

Pershad Sing, defendant, replies that up to 1251 F. he paid all his rents, except 12 rupees; that the rubbee crop of that year having been cut and carried off by force by the plaintiff, the defendant in consequence threw up his lands in the beginning of 1252 F., and the plaintiff put Byjnath Sing and others into them. In 1253 F., the

plaintiff reinstated the defendant in his former lands, and the rent of that year, including the 12 rupees balance, was 47-8-6, which sum he has more than paid, having given to the plaintiff 17-2-0, to Khuruck Sing, as per plaintiff's order, 3-10-0, and to the zemindar's umlah, as per order, 39-0-0. The defendant has nothing to say to Byjnath.

Byjnath Sing makes no reply.

The moonsiff decrees the suit in favor of the plaintiff, observing that the claim was established, and that the defendant had given no proof of his asserted payments.

JUDGMENT.

Had I been satisfied that the claim was established, I should not have interfered with the above decision, as the (defendant) appellant had ample time and sufficient means too, if his statement is to be credited, to refute it. But there has not been a sufficient investigation in this case. The account filed is but for one year, whereas the balance claimed is the accumulation of arrears from 1249 F. The luggeet on which the claim is based, gives no detail of these arrears. Again, the putwaree, in his examination, deposes that the defendant was in possession of his lands in 1252 F.; but by the paper or written authority to re-enter on his lands, filed by the defendant and admitted by the putwaree to be his writing, it appears that the defendant was not in possession in that year. This is contradictory and requires explanation, and the general village accounts kept by the putwaree ought to be called for and examined, as well to see that the arrears of 1252 F., have not been improperly debited to the defendant, as that the detail of arrears may be ascertained and the result compared with the balance brought forward in the luggeet. I decree the appeal and remand the case for re-investigation and decision with reference to these remarks. The value of the stamp for the appeal will be refunded to the appellant in the usual manner.

THE 7TH JANUARY 1850.

No. 158 of 1848.

Appeal against the decision of Sheikh Kasim Allee, former Additional Moonsiff of Gya, dated the 6th March 1848.

Doollee and Ram Chunder, (Defendants,) Appellants,

versus

Jokhoo, (Plaintiff,) Respondent.

THIS suit was instituted on the 17th September 1847, to recover a silver armlet or the value of it. Suit laid at 10 rupees.

The plaintiff states that he pawned with the defendants two silver armlets, receiving from them a loan of 9 rupees, which he duly repaid, but the defendants would only return one armlet. The plaintiff therefore sues for the one unlawfully detained, or for the value of it.

The defendants admit having received the two armlets, but plead that they were both given back, when the plaintiff repaid the loan.

The moonsiff decrees the claim, observing that the defendants admit receiving the two armlets, and though granted time, had given no proof of what they advanced.

The defendants appeal, stating that one of them was ill and the other away on a visit when the moonsiff called for their witnesses.

JUDGMENT.

The appellants are deserving of no indulgence. They took four full months to reply to the plaint, and afterwards allowed six weeks to elapse without taking any steps to refute the claim. The decree of the lower court is confirmed, and this appeal dismissed, with costs.

THE 7TH JANUARY 1850.

No. 160 of 1848.

Appeal against the decision of Sheikh Kasim Allee, former Additional Moonsiff of Gya, dated the 27th July 1848.

Tooree Saho, for self and as heir of Boodhoo Saho, deceased,
(Plaintiff,) Appellant,

versus

Sheikh Sunnab, (Defendant,) Respondent.

THIS suit was instituted on the 4th February 1848, to recover Company's rupees 57-14-5, principal and interest of a bond, dated the 1st of Maug Sumbut 1898.

The plaintiff states that the defendant borrowed of him and his brother, Boodhoo Saho, the sum of 50 Sicca rupees and gave a bond for the same. He paid altogether 21-11-0, of which 6 rupees are acknowledged on the back of the bond; and as he refuses to pay the balance of the debt, the plaintiff, for himself and as heir of Boodhoo Saho, brings this action to compel him.

The defendant admits the bond, but pleads that on various occasions he paid to the plaintiff and his brother, through himself and through certain other parties, the sum of rupees 56-3-3, of which he holds receipts for rupees 18-8-0, and the plaintiff acknowledges rupees 21, annas 11, more.

The moonsiff observes, that the plaintiff admits payments to the amount of 18-8-0, but he gives credit for only 6 rupees on the bond, which is extraordinary; and as the defendant's witnesses prove payments on his part to the extent stated by the defendant, the plaintiff is entitled to nothing more than what remains due on the bond, minus those payments. The moonsiff accordingly draws up an account and decrees to the plaintiff the sum of rupees 9-3-0.

JUDGMENT.

I agree with the moonsiff, and think that, if the plaintiff neglected to credit the defendant with sums he acknowledges to have received,

there is no reliance to be placed on his statement. And as the defendant has proved his payments, and the sum awarded by the moonsiff is all that the plaintiff seems entitled to, I uphold the decree, and dismiss this appeal, with costs.

THE 10TH JANUARY 1850.

No. 130 of 1848.

Appeal against the decision of Moultee Mahomed Abdool Luteef, former Acting Moonsiff of Jehanabad, dated the 17th of June 1848.

Khadim Hossein, (Plaintiff,) Appellant,

versus

Metur Singh and Irshad Allee, (Defendants,) Respondents.

THIS suit was instituted on the 29th December 1847, to recover rupees 197-3-7, principal and interest of a bond, dated 9th Aughun 1254 F.

The plaintiff states that the defendants, who are farmers of the village Jadeh Lukhun Summah, borrowed of him rupees 175-11-0, free of interest, with which to pay their rents; that they gave a joint bond for the same, dated as above, in which it was stipulated that the money should be repaid by the full moon of Pous 1254 F.; but to the present time they have paid nothing, hence this suit.

Metur Singh defendant denies receiving the loan or giving the bond, and pleads that he got the farm of the village in question, in 1253 F., and in 1254 F. he took the second defendant, Irshad Allee, as his partner, and gave the farm in management to him; that the collections from the village were more than enough to meet the rents, but notwithstanding this, the said Irshad Allee withheld them and prepared a fictitious bond in the name of the plaintiff, for the amount of rupees 175-11-0, to which he attached the signatures of both defendants; that even this sum was afterwards repaid out of the proceeds of the estate, as would be seen by the putwaree's papers.

Irshad Allee defendant admits the bond in the joint names of himself and Metur Singh, but pleads that the latter ousted him from all participation in the farm, taking to himself the whole of the proceeds, so that he is alone answerable for the amount of the bond.

The moonsiff dismissed the suit, on the ground that one witness on the part of the plaintiff, and all those on the defendants' side, deposed that the interest agreed upon was rupees 2 per cent. per mensem, which being usurious, and in violation of Regulation XV. of 1793, he dismissed the suit.

In appeal, it is pleaded by the plaintiff that there was no such condition as regards interest in the bond, and that therefore there was no ground for dismissing his suit.

JUDGMENT.

Having carefully perused the pleadings and evidence in this case, I am clearly of opinion that this is a fictitious suit, inasmuch as Irshad Allee was the real lender of the money, for which a bond was given in the plaintiff's name: on this ground therefore the case ought, under the Circular Order of the Sudder, of the 29th of June 1809, to have been nonsuited.

ORDERED,

That the appeal be dismissed with costs, and the original case of the appellants be nonsuited.

THE 11TH JANUARY 1850.

No. 102 of 1848.

Appeal against the decision of Moulvee, Mahomed Abdool Luteef, former Moonsiff of Jehanabad, dated the 5th of May 1848.

Shew Sahae, Shew Burut, and Jhoomuk, (Defendants,) Appellants,
in the suit of Mr. Solano, (Plaintiff,) Respondent,

versus

The Appellants and Shunkur, Defendants.

THIS suit was instituted on the 14th January 1848, to recover rupees 104-13-9, amount of damage done to the crops of the plaintiff's farm by the grazing of the defendants' cattle.

The plaintiff states that he is the farmer of the village of Mainporah; that on the nights of the 14th October and 17th November 1847, the defendants let loose their cattle on the cultivation, and so utterly destroyed the crops of 55 beegahs, that the land was afterwards measured in order to estimate the loss, which being done by the putwaree, the defendants agreed to pay it. As they now refuse to do so, this suit is brought to oblige them, the damage laid in the plaint being the malik's share of the loss sustained.

The defendants deny the claim, and plead that they never agreed to pay the alleged loss. The fact is, that several quarrels have taken place between the plaintiff and the defendants, as they can show by decisions of different courts, and that this suit has been got up in spite.

The moonsiff decrees the claim, on the evidence of the plaintiff's witnesses, and on the ground of a report of a local ameen.

The appellants urge that the witnesses of the plaintiff were all his servants, that the ameen's report is partial, and that they were not present at his investigation. They also object to the amount of damages as excessive.

JUDGMENT.

Had the crops been so utterly destroyed, the plaintiff would, I think, have gone sooner into court, and have petitioned for a local enquiry when the degree of loss could have been ascertained by the inspec-

tion of the moonsiff himself, or by an officer of his court. The delay therefore is a bad feature in the plaintiff's case, and indicates, I think, that the crops were not so utterly destroyed, as they are represented to be. And indeed it is not likely that they were so completely destroyed; for it is customary for the ryuts to watch their crops, and they would hardly suffer a herd of cattle to be let loose upon their lands, till they had utterly devoured the produce. On looking, moreover, at the putwaree's estimate of the damage, the produce is much greater than any ordinary land could yield, on these grounds, the damage sued for and decreed appears to me excessive, and I think the respondent will be amply paid by a decree in his favor for 40 rupees and his costs in full.

ORDERED,

That the decree of the lower court be amended accordingly, and that the appellant pay the costs of this appeal.

THE 14TH JANUARY 1850.

No. 153 of 1848.

*Appeal against the decision of Syud Tufazzul Hossein, Moonsiff of
Gya, dated the 7th of July 1848.*

Sheikh Baroollah, (Defendant,) Appellant,

versus

Musst. Nuscerun, (Plaintiff,) Respondent.

THIS suit was instituted on the 3rd June 1847, to recover rupees 71-14-3, the realized amount, with interest, of costs of a suit.

The plaint sets forth that Musst. Muhbooboon Nissa and others, deposited on the 10th June 1843, in the judge's court, the sum of rupees 60-4, the amount of a decree due to the plaintiff; the defendant, Baroollah, having forged a vakulutnamah, purporting to have been signed by the plaintiff through one Asgur Allee, a creature of the defendants, and obtaining the authenticity of the Gya cazee, drew out the money on the 31st July 1843. The plaintiff discovered the fraud soon after through her son, Oomyd Allee, whom she sent to take out the money. The plaintiff pleads further, in proof of the forgery, that the vakulutnamah was not sealed with her seal, which is always used in documents requiring her signature; that as her son, Oomyd Allee, knows how to write, it is not to be supposed that she would have had recourse to Asgur Allee to sign for her; and that as she lives in the Behar cazee's jurisdiction, it is not likely that any deed of her's should be taken to any other cazee to be authenticated.

The defendant admits that he drew out the money, but asserts that the same was remitted by him to the plaintiff through Asgur Allee, her servant, and a man of his own by name, Bhoodoo, and the receipt of it was acknowledged by Oomyd Allee, plaintiff's son, in a letter to the defendant's address.

The moonsiff remarks that the defendant admits drawing out the money, and meets the objection of the vakulutnamah not being sealed, by the assertion that several vakulutnamahs have been given by the plaintiff without being sealed by her. But he gives no proof on this head, nor can he indicate any particular instance. Moreover, he did not name Asgur Allee as a witness at all, and stated that Bhoodoo, whom he did name, had been bought over by the plaintiff, and as to the evidence of his other witnesses they were not to be trusted. The moonsiff observes further, that the letters produced by the defendant in proof of the payment were not dated, nor did it appear on what occasion and for what object they were written. On these grounds the moonsiff decrees the claim.

In appeal, it is urged that the defendant pleaded that the letter produced by him in proof of payment of the money claimed was written by Oomyd Allee, therefore to decree the claim without taking his evidence was both improper and unjust; that as to the argument that the defendant ought to have named Asgur Allee as his witness, he, defendant, is the best judge how far his case would be benefitted by his evidence; but as Asgur Allee was in the plaintiff's service, why did not she produce him to disprove the alleged payment?

JUDGMENT.

The investigation was without doubt incomplete without the evidence of Oomyd Allee, and the decision therefore cannot stand. But there are grounds, I think, sufficient to reject the claim altogether without further delay or enquiry. In the first place, the delay in bringing the suit is unaccountable and throws a strong suspicion on the truth of the case. The plaintiff has by implication told two deliberate lies, and a third may I think be imputed to her. She objects to the vakulutnamah, through means of which the money was drawn, not being sealed, stating that it was her custom to put her seal on all documents in which she was concerned. Now I find that in the original case, in which the plaintiff obtained the costs now alleged to have been swindled by the defendant, the vakulutnamah of the plaintiff bears no seal. This is one lie. Again, she objects to the vakulutnamah on the ground that it was not authenticated by the Behar caze. The vakulutnamah in the original case above referred to was also authenticated by the Gya caze, as the alleged forged one was. This is the second lie. The third lie, which might, I think, be easily proved upon her, is in stating that Asgur Allee was a creature of the defendant. Now the circumstances of the case afford a strong presumption that Asgur Allee was and is in the service of the plaintiff. A case that requires such unfair means for its support, must be presumed to be a bad case, and unless the proofs on the same side were ample to counteract this objectionable feature, the suit should be dismissed. Now the proof on the plaintiff's side is confined to the admission of the

defendant that he received the money, and on this ground and the circumstantial facts detailed in the decision, the moonsiff gave judgment in the plaintiff's favor. For those facts the moonsiff relied principally on the plaintiff's statement, which I have shewn to be misrepresented, so that the judgment has nothing to stand upon. The defendant, on the other hand, gave proof that the money drawn by him he duly remitted, and, under the circumstances, I believe him. I accordingly reverse the decision of the lower court, and decree the appeal, with costs against the respondent.

THE 14TH JANUARY 1850.

No. 164 of 1848.

Appeal against the decision of Syud Tufuzzul Hossein, Moonsiff of Gya, dated the 24th of July 1848.

Musst. Wassun, (Plaintiff,) Appellant,

versus

Sheikh Ahmud Allee, (Defendant,) Respondent.

Objector, Maha Rancee Inderjeet Kooer, wife of Maha Rajah
Hetnarain Singh.

THIS suit was instituted on the 26th June 1847, to set aside an award of the criminal authorities under Act IV. of 1840, dated the 27th October 1846, to amend Clauses 8 and 12, Section 12, of the roobakaree settlement of mouzah Shah Muhumudpoor, dated 22nd October 1840, with respect to the use of the water of a tank belonging to mouzah Rewarah, and to stop a watercourse or drain from the said tank. Suit valued at rupees 150.

The plaint sets forth that the estate of Rewarah belongs to the plaintiff, and mouzah Shah Muhumudpoor, an adjoining village, is the property of the defendant. In Rewarah there is a tank, regarding which the defendant brought a suit under Act IV. of 1840, claiming a right to the use of the water by means of a drain leading to his village. The criminal authorities, on the strength of the settlement roobakaree of the village of Shah Muhumudpoor, decreed the claim in favor of the defendant, notwithstanding that the plaintiff admitted, the witnesses proved, and the survey map shewed, that the tank in question was in Rewarah. On these grounds the plaintiff sues to set aside that award, adding that, on the 6th September 1839, the magistrate referred Nuzur Allee Khan, the former proprietor of Shah Muhumudpoor, to the civil court, when he preferred a similar claim in respect to this tank. No suit having been made by Nuzur Allee Khan, the interference of the criminal court and the proceedings of the settlement officer, are both unwarrantable. That in the survey map there is no trace or sign of the alleged drain. That at the time of settlement, the putwaree of Shah Muhumudpoor stated that there was no means of irrigation

by water from without the estate. That at the time of the settlement the plaintiff was not present, when the deputy collector recorded his remarks, that the lands of Shah Muhumudpoor were usually irrigated from the Rewarah tank. And that, though possibly, when the two villages belonged to the same party, he might have allowed the use of the water, now and then, to the Shah Muhumudpoor ryuts, that can confer no prescriptive right on the zemindar of that village, now that the estates have gone into different hands.

The defendant replies, that the civil courts have no power to disturb a settlement which has been confirmed by Government; that since from immemorial usage his lands have been irrigated from the tank in Rewarah, that custom cannot now be revoked; that as to the order passed in the suit of Nuzur Allee Khan by the criminal court, and his not instituting a civil suit, the plaintiff cannot draw from it any argument in his own favor, as Nuzur Allee Khan being the malik, and not the lakhirajdar, had no expectation of being allowed to settle for the mehal, and so took no trouble about it; that the putwaree's evidence on which the plaintiff has relied, was collusive; and as to the survey map not shewing the drain, the same was the case in every estate, the object of the maps being to define the boundaries, and not to particularize the internal economy of estates.

The defendant contends, on these grounds, that the settlement made with him, by which the right of the use of the water of the Rewarah tank, by means of the said drain, was confirmed to him, should be upheld in all its integrity.

Maha Rance Inderjeet Kooer, a third party, makes a representation somewhat irrelevant, to the effect that the estates of plaintiff and defendant derive no benefit from any water on her estate.

The moonsiff, who visited the scene of contention, observes that the two villages belonged to Khajeh Muhumud Yar Khan, and that the lands of both villages were irrigated from the waters of the tank in question; that he saw the drain leading from this tank into the village of Shah Muhumudpoor, and that it was of old construction; that since from these circumstances, and in virtue of the settlement made with him, the defendant has a right to use of the water. The moonsiff dismisses the plaintiff's claim, and decrees that, in accordance with established usage, the drain remain as it is, and that both parties participate in the water of the Rewarah tank, for the irrigation of their respective estates.

JUDGMENT.

The roobakaree of settlement left the moonsiff no other course but that recorded in his decision, viz., to declare that the water of the Rewarah tank should be joint property. After declaring before the parties my concurrence with this decision, I proposed to them, with a view to prevent, as far as possible, future disputes, which the nature of the order was calculated to produce, that they

should agree to use the water on alternate days. To this the parties after a little demur agreed. I have therefore to record that the decree of the moonsiff be upheld with the addition and amendment agreed to by the parties. The appeal is, of course, dismissed, with costs.

THE 14TH JANUARY 1850.

No. 163 of 1848.

Appeal against the decision of Syud Tufuzzul Hossein Khan, Moonsiff of Gya, dated the 24th of July 1818.

Sheikh Ahmud Allee, (Defendant,) Appellant,

versus

Musst. Wassun, (Plaintiff,) Respondent.

THIS is a second appeal from the moonsiff's decision in the case detailed in No. 164. The party appealing is the defendant in that case, who objects to the order of the moonsiff in so far as it confers on the appellant only a right to the *joint* use of the water of the tank in question, whereas he alone has, as he asserts, a right to it.

JUDGMENT.

I agree with the moonsiff in thinking that the water of the tank should, by the terms of the settlement, be looked upon as the joint property of the appellant and respondent. The appeal is accordingly dismissed, with costs.

THE 14TH JANUARY 1850.

No. 162 of 1848.

Appeal against the decision of Syud Tufuzzul Hossein Khan, Moonsiff of Gya, dated the 24th of July 1848.

Sheikh Ahmud Allee, (Plaintiff,) Appellant,

versus •

Musst. Wassun and others, (Defendants,) Respondents.

THIS is a third case between the parties concerned in the two foregoing suits. The plaintiff herein sues to recover the sum of rupees 298-2-0, as damage alleged to have been sustained by him in his cultivation, by closing the watercourse from the tank of Rewarah.

The moonsiff thought that the object of the suit was merely as a set-off against the one instituted by Musst. Wassun; and as it was notorious that in 1254 F., the rains were abundant, and artificial irrigation was not needed, he discredited the fact of any loss having been sustained by the plaintiff in the manner alleged, and dismissed his claim.

JUDGMENT.

In this I concur, and dismiss the appeal, with costs.

THE 15TH JANUARY 1850.

No. 121 of 1849.

Appeal against the decision of Moulvee Syud Mahomed Furreedooddeen, Moonsiff of Aurungabad, dated the 5th of June 1848.

Khoob Lal, (Plaintiff,) Appellant,

versus

Nund Lal, Jugmohun Lal, Juttadharee Lal, for themselves, and as heirs of Musst Hurbunsee Kooer, deceased, wife of Dhurum Sahae, deceased, and Brij Lal and Jygopal Lal, sons of, and Bodnath and Bala, grandsons of Hurpurshad Das, deceased.

THIS suit was instituted on the 17th January 1848, to recover rupees 41-2-3, principal and interest of a bond, dated the 14th Kartick 1248 F.

The plaintiff states that Nund Lal, Jugmohun Lal, Juttadharee Lal, Brij Lal and Hurpurshad Das executed on the date mentioned, a bond in his favor for rupees 22-8-9, being interest on account of some mortgage transaction; in which it was stipulated to pay the said sum in cash by the full moon of Mang 1248 F., or to deliver free of charge the value of the same in rice; but to the present day neither of the conditions have been fulfilled, hence this suit against the parties. Hurpurshad having died, his heirs are sued in his place.

The defendants did not appear. The moonsiff gave the plaintiff a decree for the principal of the bond, but allowed no interest.

The plaintiff appeals, urging his right to the interest.

JUDGMENT.

I quite agree with the moonsiff, and accordingly dismiss this appeal, with costs.

THE 15TH JANUARY 1850.

No. 168 of 1848.

Appeal against the decision of Sheikh Kassim Allee, former Additional Moonsiff of Gya, dated the 27th of July 1848.

Nirmul, Appellant in the suit of Balkisheno Roy, and on his demise Tota Singh, Jehul Singh, Narain Singh, Ootim Singh, Gyan Singh and Gujraj Singh, his sons and heirs, (Plaintiffs,) Respondents,

versus

The Appellant, Dumree Roy, Khceru Roy, Nurhur Roy, Rucheea Singh, sons of Suntookee Roy, deceased, Surrubjeet Singh and Tota Singh, sons of Bhookun Roy, deceased, Defendants.

THIS suit was instituted on the 20th September 1847, to recover Company's rupees 215-6, the principal and interest, due on an instalment bond, dated the 1st Assin 1243 F.

The plaint sets forth that, on an adjustment of accounts between the parties, the sum of Sicca rupees 101, was the sum due to Bal-

kisheno Roy from Nirmul, for which he, on the securities of Suntookee Roy and Bhookun Roy, executed the bond in question, stipulating to pay the amount in specified instalments, the first of which was to commence from 1254 F. Not being paid a fraction, the plaintiffs are compelled to sue him.

Nirmul denies the claim *in toto*, and pleads that he never was in want of money, and never had such bad credit as to require the services of securities; that the suit is brought contrary to law after the lapse of twelve years, and the plaintiffs seek to establish it by evidence of their own relations and dependants.

Dumree Roy and Surrubjeet Singh reply and plead that Suntookee Roy, one of the securities named, died in Sawun 1242 F., prior to the date of the bond, which proves it to be a forgery.

The moonsiff decreed the claim, observing that the same was fully established by the subscribing witnesses, and by the writer of the bond; that the defendants were called upon for proof of the alleged fact of Suntookee's death, prior to the date of the bond, but from the 22nd March 1848 up to the date of the final order they had adduced no proof at all. And being of opinion that no sufficient grounds have been shewn to interfere with the decision, I hereby confirm it, with costs against the appellant.

THE 15TH JANUARY 1850.

No. 170 of 1848.

Appeal against the decision of Syud Mahomed Allee Ashruff, Moonsiff of Behar, dated the 31st of July 1848.

Horil, for self, and as heir of Shewuk, (Defendant,) Appellant,

versus

Moona Lal, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff on the 10th February 1848, to recover Company's rupees 19, principal and interest of a bond, dated the 1st Kartick 1249 F., executed by the defendant and his deceased brother, Shewuk.

The defendants did not appear, and the moonsiff gave an *ex parte* decree against them, on proof of the due execution of the bond, and that the proper formalities had been observed with respect to the notice and the ishtehar.

Horil now appeals, but as he has not shewn sufficient grounds for his default in the first instance, I dismiss his appeal, with costs, and affirm the decision of the lower court.

THE 16TH JANUARY 1850.

No. 166 of 1848.

Appeal against the decision of Syud Mahomed Allee Ashruff, Moonsiff of Behar, dated the 25th of July 1848.

Deendyal Singh, Doolar Singh, Nowazee Lal, Dhuleep Singh, Chummun Panday, Jubboo Roy, Beehu Modee, Heera Singh, Appellants, in the suit of Prainlal, proprietor, and Oodum Dass, farmer, (Plaintiffs,) Respondents,

versus

The Appellants and Ram Sahace, Defendants.

THIS suit was instituted on the 23rd August 1847, to reverse an award of the criminal authorities passed under Act IV. of 1840, dated the 13th November 1846, to remove a newly made bund, and so open the course of a drain to the village of Sydpoor Bhowa, a dakhilee mouzah of mouzah Dehree, pergunnah Nurlut, to raise the bed of a turooa or watercourse by 9 inches according to the level it was before, and to recover Sicca rupees 276-5-9, the damage done to a crop of rice. Suit valued at this sum and Company's rupees 5-0-0, the estimated cost of the required alterations in the watercourse. Total value of suit Company's rupees 299-5-3

The plaint sets forth that mouzah Sydpoor Bhowa is a dakhilee village of mouzah Dehree, and belongs to Prainlal, plaintiff, the village of Poonacebeegah, situated to the south east of Dehree, is the property of Deendyal, Doolar Singh, Ram Sahace, Nowazee Lal and Dhuleep Singh. The rain water, which finds its way into the plaintiff's reservoir in Sydpoor, is the drainings of the land to the southwest, which is brought into the reservoir through a turooa or drain or watercourse within the defendants' estate, by another drain which runs at right angles to it. The plaintiffs' lands have always been irrigated by water so conveyed into his reservoir. In 1253 F., the defendant shut up the mouth of the drain that leads into the said reservoir, and deepening the bed of the turooa in his own estate, carried off the water into a reservoir of his own. In this way beegahs 165-13-0 of land in the village of Sydpoor Bhowa, has been rendered unfit for cultivation. The plaintiffs brought a suit against the defendants, regarding this matter, under Act IV. of 1840, which was dismissed by the deputy magistrate, who passed his orders without inspecting the spot, and was guided in his decision entirely by the map of the revenue survey. Although there is no trace of the said drain in the map, that is no bar to the plaintiffs' claim, and they therefore bring the present suit that they may be restored to their rights.

The defendants reply that there is no such drain as the one alleged to be in existence by the plaintiffs; but there is a drain or watercourse within the defendants' village, running east and west, which drains the land lying to the south of their village and carries the

water into a reservoir, also in their village; that in the plaintiffs' estate there is a large watercourse from which their lands are irrigated; and that as to the water of the drain within the defendants' estate, the plaintiffs never had the use of it or any right to it

The moonsiff records in his decision that the award of the deputy magistrate, which was founded on the revenue survey map, was contrary to the purport of the papers of the case then before him; that the drains said by the plaintiffs to lead into their village, not being shewn in the map, is nothing to the purpose; for neither is the drain within the defendants' estate to be traced in the map; nor is it any argument against the claim of the plaintiffs, that the turooa or watercourse, which feeds the drain leading into their village, is situated within the defendants' estates; for in instances of nullahs and other watercourses, their waters are used for irrigation by the villages other than those in which they have their rise; that the plaintiffs' claim is fully supported by their evidence, and that the witnesses of the defendants were discrepant; that from the map and local enquiry of an ameen it was further fully corroborated; on all which grounds the moonsiff decreed the case. He observes that the defendants objected to the ameen's enquiry only after his report was filed, and begged that the moonsiff might himself go to the spot. But the moonsiff overruled the objection, and recorded, that he had too much to do than to superintend local enquiries in every case.

JUDGMENT.

In a case of this nature, I think a local enquiry by the moonsiff himself was indispensably necessary, and without it I cannot see how he could satisfy himself that the claim of the plaintiff was fully established. I am by no means satisfied, and think that it behoves the moonsiff to go himself to the spot in dispute, and see if there is the alleged drain which runs at right angles to the drain within the defendants' estate, (which is denied by the defendants;) whether from the point of junction to the entrance of the alleged drain within the lands of plaintiffs, there is the clearest trace of it, (which there ought to be;) whether from the point of junction, again, of the two drains (the one running east and west through the defendants' estate and the other branching off from it at right angles north) there has been made a bund, as alleged. These are points of enquiry which the moonsiff must decide with his own eyes, before I can place any confidence in his decision. I remand the case accordingly for re-investigation and decision *de novo*, and desire that the value of the stamp for the appeal be refunded to the appellant.

THE 16TH JANUARY 1850.

No. 169 of 1848.

Appeal against the decision of Sheikh Kasim Allee, former Additional Moonsiff of Gya, dated the 31st of July 1848.

Chintamun Pandey, (Defendant,) Appellant,

versus

Roop Chand, and after his demise, Lalo Kooer *alias* Dacc Putee Kooer, his daughter, (Plaintiff,) Respondent.

THIS suit was instituted on the 27th January 1848, by the plaintiff, to recover from the defendant the amount of rupees 42-7-3, principal and interest due on a bond, dated the 30th Bysakh 1253.

The defendant denies the claim *in toto*, and affirms that the suit is brought at the instigation of one Muhumt Melaram, an enemy of his. He is willing to abide by the oath of the plaintiff.

The moonsiff decreed the claim on the evidence of the plaintiff's witnesses, and as I see no reason to doubt the truth of the alleged transaction, I confirm the decision, and dismiss this appeal, with costs.

THE 17TH JANUARY 1850.

No. 120 of 1848.

Appeal against the decision of Moulvee Syud Mahomed Furreedooddeen, Moonsiff of Aurungabad, dated the 2nd of June 1848.

Musst. Rookmin Kooer, mother of Byjnath Missur, and heir of Gokhoolanund Missur, (Defendant,) Appellant,

versus

Baboo Rugbeer Sing, (Plaintiff,) Respondent.

THIS suit was instituted on the 27th January 1848, to obtain possession of 30 beegahs of land out of the village of Kurruhra, for the purpose of cultivation. Suit valued at rupees 60, the estimate of one year's produce.

The plaint sets forth that Gokhoolanund Missur, having obtained the farm of the village of Kurruhra, turned out the plaintiff from his tenure, whereon plaintiff sued him in the civil court and obtained a decree. When the moonsiff went to put the plaintiff in possession in execution of the decree, Gokhoolanund Missur gave a written agreement, to the effect that he would give the plaintiff 60 beegahs of land at an yearly rent of rupees 35, and that, if the plaintiff should hereafter desire to cultivate more land, he should have it at the usual rate. In accordance with which the plaintiff is in possession of 60 beegahs, but having now obtained two more ploughs, he desires to extend his cultivation, but the defendant, in contravention of his agreement, will not grant him more land. The plaintiff accordingly sues him.

Musst. Rookun admits the execution of the agreement by Gokhoolanund Missur, and pleads that the plaintiff tells a falsehood in saying that he desires to cultivate more land, as he is not able to cultivate, except by aid of his relations, the land he now holds.

The moonsiff remarks that the agreement being admitted, the plaintiff is entitled by its conditions to a decree. He gives him a decree accordingly.

JUDGMENT.

I don't agree with the moonsiff that the terms of the agreement entitle the plaintiff to demand any quantity of land he likes. Such condition would have been ridiculous and unreasonable, and could not be carried out. The dispute was evidently compromised by the defendant giving to the plaintiff 60 beegahs of land, at the fixed low rate of rupees 25 yearly rent. What is said afterward in the deed of agreement, to the effect that, should the plaintiff be able to cultivate more land than the 60 beegahs, he should have it at the usual rates, is only added as security that higher rates would not be demanded, or in other words, that the plaintiff should not suffer on account of the light assessment of 60 beegahs, by being made to pay more than others for what else he might bring under cultivation. I reverse the decision of the moonsiff, and decree the appeal with all costs against the respondent.

THE 17TH JANUARY 1850.

No. 143 of 1848.

Appeal against the decision of Syud Mahomed Allee Ashruff, Moonsiff of Behar, dated the 28th of June 1848.

Sheikh Amjud Allee, Appellant, in the suit of Musst. Talun, (Plaintiff,) Respondent,
versus

The Appellant and Gholam Kadir, his son, Defendants.

THIS suit was instituted on the 21st January 1848, to recover rupees 100, on account of a decree.

The plaint sets forth that the mother of plaintiff and Amjud Allee, obtained a decree on the 29th March 1836, in the civil court against Ashkuree Begum and others, for rupees 176-12-3, on account of rent. On the death of Musst. Zebun, the plaintiff, and Amjud Allee, her son and daughter, became joint heirs of her property. Amjud Allee, unknown to the plaintiff, took out execution of the abovementioned decree, and, causing the property of the defaulters, consisting of certain lands, to be sold, himself became the purchaser in the name of his son, Gholam Kadir, for rupees 252, for which he gave his receipt. When the plaintiff heard of this, she petitioned the sudder ameen of Patna, by whom the property was sold, who, considering the plaintiff's title clear, made over to her rupees 15, afterwards realized from the defaulters. Thus the total sum realized on account of the

decree was rupees 267, of which the plaintiff claims one-third as her portion, *plus* interest, and *minus* the rupees 15 already received.

Amjud Allee admits the plaintiff's right to share in the decree, but pleads that it was agreed between the plaintiff and himself that he should take out execution, and as he was to advance all the funds necessary for the purpose, (as he had done in the original suit) it was stipulated that his expenses should first be deducted out of whatever sum might be realized on account of the decree. Thus the defendant took out execution, but instead of cash he obtained some land, of which the plaintiff is free to take a third. She should have sued for this and not for money payment.

Gholam Kadir replies that he has no interest in the matter in dispute.

The moonsiff states, in his decision, that, since the plaintiff has a right to the one-third portion of the decree, and as the defendant without any authority from her, purchased the property of the defaulters, it is right he should pay in cash the portion due to the plaintiff of the amount realized. He accordingly decrees the sum claimed against Amjud Allee, Gholam Kadir being released from liability.

JUDGMENT.

There is no unfair motive imputed to the defendant in his purchase of the property, in lieu of the decree due to him and the plaintiff jointly. Nor is there any reason assigned why the plaintiff should object to take her share of the property purchased, or why she holds out for money payment. In absence of all this, it must be presumed that the purchase by himself seemed to Amjud Allee, under the circumstances, to be the most advantageous plan for the mutual benefit of the parties interested in the decree, and, as he confesses himself willing to give the plaintiff her share of the purchase, and nothing is urged to the contrary, I reverse the decision of the lower court, which awards a money payment to the plaintiff, and decree the appeal in favor of the appellant, with all costs against the respondent.

THE 21ST JANUARY 1850.

No. 111 of 1848.

Appeal against the decision of Moulree Mahomed Abdool Lutef, former Acting Moonsiff of Jehanabad, dated the 15th of May 1848.

Musst. Wuzeerun, and, on her demise, Sheikh Kurreem Buksh,
(Plaintiff,) Appellant,

versus

Mulik Morad Allee, Salamut Allee, Roohool Ameer, Kazim Allee,
Kadir Allee, and Irshad Allee, (Defendants,) Respondents.

THIS suit was instituted on the 6th September 1847, to recover rupees 231-2-6, principal and interest, on account of the hakim's

share of grain, the produce of 42 beegahs of land in mouzah Bulbhudderpoor Suchnee, plundered by the defendants.

The plaint sets forth that the village in question was purchased by the plaintiff in Asin 1254 F. That on the 23rd Maug following, the defendants, accompanied with a number of other persons, by force and violence carried off the produce of 42 beegahs of land and ousted her from the same. The plaintiff brought a suit for possession of the land, and got a decree under Act IV. of 1840, and she now sues for her share of the grain plundered.

Mulik Morad Allee, Salamut Allee, and Kazim Allee, reply and deny the plunder. They state that Morad Allee is old and blind and incapable of such an act. They admit that Morad Allee and Kazim Allee were cultivators, but that they divided the produce of their lands with Juggurnath Sahoo, the former proprietor. They assert that it was not known till Maug 1254 F., that plaintiff had purchased the village.

Irshad Allee replies that he did not commit the plunder, but that the other defendants did, and that his own share of the produce was carried off by them also.

Roohool Ameer replies that he had no concern in the matter; that he is no cultivator, and was at Jehanabad some time prior and at the time of its alleged commission.

Kadir Allee did not reply.

The moonsiff dismisses the claim, observing that the defendants, being ryots, could not plunder their own property. The plaintiff ought, he remarks, to have sued the defendants for her share of the rents.

JUDGMENT.

From all the papers of the case it is perfectly clear that the plunder, as alleged, did take place, and the plaintiff (appellant) was entitled to a decree against such of the defendants as were proved to have been concerned in it. The ground for dismissing the suit was not a good one. I therefore reverse the order, and remand the case, in order that the present moonsiff may restore it to its original place on the file, and pass such orders in respect to damages as he may think just and equitable, after a due consideration of all the circumstances. The value of the stamp for the appeal is to be refunded to the appellant.

THE 22ND JANUARY 1850.

No. 30 of 1848.

*Appeal against the decision of Syud Mahomed Ibrahim Khan Bahadoor,
Principal Sudder Ameen of Gya, dated the 14th of September 1848.*

Jeeblal Singh and Jankee Ram, Appellants, in the suit of Musst.
Sahib Kooer, wife of Tukneet Hirday Narain, (Plaintiff,) Respon-
dent,

versus

The Appellants and Government, Defendants.

THIS suit was instituted on the 17th July 1845, to obtain possession in virtue of proprietary right, and by the reversal of various orders of the revenue department, of dates the 5th September 1839, 5th September 1840, and 3rd December, 1841, of the entire mouzahs Beshoonpoor and Khoosheebadh, pergunnah Roh, to obtain the entry of their names in the collector's books as occupants and proprietors, and recover rupees 1,500, mesne profits from 1248 to 1252 F. Suit valued at rupees 2,501.

The plaint sets forth that the village of Beshoonpoor was a ghat-walee mehal, belonging to the ancestors of the plaintiff's husband; mouzah Khoosheebadh was a dependant village of the same. On their resumption a settlement was made of Beshoonpoor for four years, from 1234 to 1238 F., with a party wholly unconnected with the property. Afterwards a settlement of both the villages of Beshoonpoor and Khoosheebadh, at a half jumma or rupees 420-10-8, was made with Hirday Narain, the plaintiff's husband, from 1239 to 1245 F. On the expiration of this period, a fresh settlement was made with Hirday Narain for twenty years commencing from 1246 F., on a jumma of rupees 639-2-2, the estate of Ganwah in Hazareebaugh being given as security. At this stage, Jeeblal Singh, one of the defendants, appeared before the deputy collector by whom the settlement was made, and laid claim to the settlement on the score that he was the head ryot of the estate. On which the deputy collector decided on rejecting the security tendered by Hirday Narain, as being situated in the extra-regulation provinces, where estates could not be brought to sale for arrears, and transferred the settlement to Jeeblal Singh. Hirday Narain appealed against this proceeding to the superintendent of settlements, who ordered that the settlement made with Hirday Narain might stand; but, notwithstanding this, and though the estates were in Hirday Narain's possession up to 1248 F., and a sum equal to one year's rent had been deposited in the collector's office in lieu of security, the superintendent of settlements, on the report of the deputy collector, submitted the case to the commissioner, recommending that the settlement made with Jeeblal Singh should be confirmed. About this time Hirday Narain died, and the plaintiff, as his heiress, petitioned the commissioner against this proceeding, but her prayer was rejected. An appeal to the

Sudder Board of Revenue met with no better success. The revenue authorities, having thus acted contrary to the spirit and intent of Government Orders, the directions of the Sudder Board, and the provisions of Regulation XIX. of 1793, which direct, that the settlement of all lakhiraj property should be made with the maliks, this suit is brought to reverse the illegal proceedings of the revenue authorities, and to be restored to her rights.

The Government replies that the plaintiff does not explain how she acquired the proprietary right she claims in the property in dispute. The fact is, that she has no right or title, the village of Beshoonpoor having been confiscated, together with all the ghatwalee mehals held by the late Rajah Ikbal Allee Khan, and Khoo-sheebadli was resumed as being an unassessed wyraneec mehal. Both being the property of Government, no one can claim the right of settlement, and it is optional with the Government in such cases, to give the settlement to such persons as it thinks will best look after the mehal.

Jeeblal Singh replies and says that, after such a length of time, since the resumption of the estates, the plaintiff has no right to be heard; that the ghatwalee mehals, being in their nature like a stipend or pension for service, are not hereditary property, and devolve on Government when those services cease.

Jankee Ram replies in support of the above, adding that it will be seen from the settlement proceedings that the plaintiff was unable to furnish the required security.

The principal sudder ameen remarks that it is clear that the property in dispute was in possession of the plaintiff's ancestors as a ghatwalee mehal. That in the case of chuck Oondee, it appears that property of this kind was settled for with the parties in possession. That as one year's rent in advance was accepted in lieu of security, no other security was necessary. That the plaintiff being a representative of the original ghatwal, has a preferential claim to the settlement over the defendants, who are only head ryuts. On these grounds, the principal sudder ameen considers the plaintiff entitled to possession and mesne profits, and accordingly decrees the same in her favor. He dismisses, however, the claim of proprietary right which he considers to be vested in the Government. He therefore releases Government from responsibility, charging the plaintiff with its expenses.

JUDGMENT.

The plaintiff's claim grounded on proprietary right, has, in my opinion, been very properly rejected by the principal sudder ameen. The reasons which appear to have influenced the lower court, in decreeing in favor of the plaintiff in right of settlement, are precedent, and the acceptance in lieu of security of one year's rent. Now, as to the first reason, that is clearly untenable, for there has been no fixed rule in regard to the settlement of ghatwalee estates

in this district, some having been settled with farmers, some with the ghatwals, and some, as in the present case, with the head men of the ghatwalee villages. So that a claim resting on precedent, which does not exist, has clearly no ground to stand on. Neither has the plaintiff established a better title on the strength of the advance; for, on reading the settlement proceedings, I find that that advance was not tendered till the settlement with Jeeblal had been concluded; and it was entirely owing to the failure of the plaintiff's husband, that the deputy collector was compelled to close with the offer of Jeeblal. It was in ignorance of the circumstances under which this engagement was made, that the superintendent of settlements was led into the acceptance of the advance, which was afterwards tendered to him by the plaintiffs' husband. When the real facts of the case became known to that officer, he supported the settlement made by his subordinate, in supercession to his own order, and, under the circumstances, I don't think the court is justified in disturbing that arrangement. On these grounds, I reverse the order of the lower court, and decree the appeal, with all costs against the respondent.

THE 23RD JANUARY 1850.

No. 103 of 1848.

Appeal against the decision of Syud Mahomed Furreedoodeen, former Moonsiff of Aurrangabad, dated the 1st of May 1848.

Gopal Patuk, Appellant in the suit of Musst. Sunneechuree,

(Plaintiff,) Respondent,

versus

The Appellant, Nurkoo Patuk, for self, and as guardian of Begoo Patuk, sons of Bunmalee Patuk, (Defendants.)

THIS suit was instituted on the 6th December 1847, to recover Company's rupees 182-10-8, principal and interest of a bond, dated 1st Pous 1243 F.

The plaint sets forth that Gopal Patuk and Bunmalee Patuk had dealings with Juwahir Saho, the plaintiff's husband. On the adjustment of accounts there appeared a balance of rupees 85-10, in favor of Juwahir Saho, for which the parties abovenamed gave a bond. Bunmalee Patuk having died, his two sons are sued in his place, in conjunction with Gopal Patuk, for the amount of the said bond with interest.

The defendants deny the claim *in toto*. Gopal Patuk alleges that he and his deceased brother, Bunmalee, lived apart and never carried on business together, that he can write, but the bond is not written in his hand. Nurkoo Patuk pleads that the suit is brought out of enmity.

The moonsiff, after inspection of the khata buhee, and hearing the evidence in support of the bond, decreed the claim in favor of the plaintiff, half against Gopal Patuk, and half against the estate of Bunmalce Patuk,, his heirs being released from personal responsibility.

JUDGMENT.

Having examined the khata buhees from ten years prior to the date of the bond, and being assured that at the time of its execution there was the alleged balance due from the parties, and being perfectly satisfied that the books are genuine and trustworthy, I have no hesitation in saying that the judgment of the lower court is perfectly just and proper. I therefore confirm it, and dismiss this appeal, with costs.

THE 23RD JANUARY 1850.
No. 140 of 1848.

*Appeal against the decision of Syud Moulree Mahomed Allee Ashruf,
Moonsiff of Behar, dated the 29th of June 1848.*

Chundoo and Mahamdoo, (Plaintiffs,) Appellants,
versus

Mullick Bunduh Allee, and, on his demise, Musst. Zuhoorun, his widow, and Allee Hossein, his minor son, (Defendants,) Respondents.

THIS suit was instituted on the 7th April 1848, to confirm possession in an old pucca house in mouzah Baennabadbalee, Boozoorg Wizeerpoor, Bannabad, pergunnah Havelee Behar, and to obtain the refund of 2 annas Sicca, paid as rent of the said house. Suit valued at rupees 53-5-11-4.

The plaintiffs were part proprietors of the village in question, of which a settlement was made with them and the other sharers. In 1846, the village was sold for arrears of Government revenue, and the defendant became the purchaser. The plaintiffs now wish to resist the call made by the defendant for the ground rent of the houses occupied by them in the village, which is the whole object of the suit. They ground their objections on the conditions of the settlement, by which the site of the houses in the village was exempted from the Government assessment.

The defendant contends that he has a clear right to the ground rent.

The moonsiff dismissed the suit, observing that, by the letter of the Sudder Board, dated the 28th July 1841, (which superseded certain other orders quoted by the plaintiffs,) it was not meant to prohibit the levying of rent on the site of houses situated on estates open to assessment.

JUDGMENT.

It is no reason why the present zemindar should be deprived of his just right to ground rent, because the Government were indul-

gent enough to relinquish it as an asset in the settlement of the estate. The moonsiff's decision was perfectly correct, and I confirm it, dismissing this appeal, with costs.

THE 24TH JANUARY 1850.

No. 173 of 1848.

Appeal against the decision of Syud Tufuzzul Hossein Khan, Moonsiff of Gya, dated the 31st of July 1848.

Kishen Lal, (Defendant,) Appellant,

versus

Girdharee Lal, (Plaintiff,) Respondent.

THIS was an action instituted on the 13th August 1847, to recover from the defendant the sum of rupees 135-12, principal and interest, of arrears of wages on account of plaintiff's service from Kartik 1249 to 22nd Asin 1253 F., at the rate of rupees 4 per mensem, as fixed in a sunnud. The total dues as claimed by the plaintiff for this period, were rupees 191, of which he alleges that he only received rupees 79-8. He therefore sues for the balance.

The defendant admitted that the plaintiff had been in his family as a writer and keeper of accounts for the period stated by him, but affirmed that he got no sunnud on his appointment, and that his wages were only rupees 2 per mensem; that, at this rate, he had received more than his due for the recovery of which he, defendant, had made a suit against him.

The moonsiff considered that the plaintiff had established his claim, and, discrediting the defendant's counter-claim of an excess payment, decreed the case in the plaintiff's favor, *minus* rupees 12, a questionable item in his account, and the sum of interest. And being of opinion on the perusal of the record and grounds of appeal, that no sufficient cause has been shewn to impugn the correctness or justness of the decision, I hereby confirm it, dismissing this appeal, with costs.

THE 24TH JANUARY 1850.

No. 174 of 1848.

Appeal against the decision of Syud Tufuzzul Hossein Khan, Moonsiff of Gya, dated the 31st of July 1848.

Kishen Lal, (Plaintiff,) Appellant,

versus

Girdharee Lal, (Defendant,) Respondent.

THIS is the counter-claim to the case reported in the foregoing No. 173. That suit having been decreed in favor of the defendant

in this case, on full proof of an arrear of wages being due to him from Kishen Lal, it is only necessary to say that the order of the lower court dismissing this suit is confirmed, with all costs against the plaintiff (appellant.)

THE 26TH JANUARY 1850.

No. 144 of 1848.

Appeal against the decision of Syud Tufuzzul Hossein Khan, Moonsiff of Gyah, dated the 28th of March 1848.

Choonee Ram, (Plaintiff,) Appellant,

versus

Chamarce, (Defendant,) Respondent.

THIS suit was instituted on the 16th February 1847, to recover rupees 33-1-0, principal and interest of a bond, dated the 22nd July 1846, given by the defendant as an acknowledgment of a loan of 31 rupees, advanced to him by the plaintiff.

The defendant admits the execution of the bond, but pleads that, prior to the execution of it, he had some dealings with the plaintiff in which he was cheated, the issue of which was that the plaintiff made out that a debt was due to him of 19 rupees. That the defendant, being at the time in want of money, could make no resistance, and it was therefore agreed that he should get 12 rupees more from the plaintiff, and execute a bond for it, inclusive of the former balance, which he accordingly did. But the plaintiff never gave him the 12 rupees agreed upon, and besides taking the bond, he made the defendant give a writing, binding himself to pay over and above the interest of the bond, 2 pice per rupee per mensem, as further interest on the principal amount of the bond. The suit is therefore liable to dismissal under Regulation XV. of 1793.

The moonsiff dismissed the claim as opposed to Section 9, Regulation XV. of 1793, observing that, although the plaintiff did not clearly admit that he charged illegal interest, he confessed in his reply, that he took the customary rates of the mahajuns, and Choonee Lal, the writer of the bond, deposed that usurious interest had been charged.

JUDGMENT.

There is nothing to shew that any attempt has been made to elude the law regarding interest, nor does the decision of the lower court mention any thing of the kind, so that the dismissal of the claim was erroneous and improper. If the evidence of a single witness (who it appears is now in the pay of the defendant as a mookhtear) is sufficient to decide that there was a stipulation made between the parties for the payment of interest beyond the legal rate, the interest *only*, under the circumstance, was liable to forfeiture. But I can

see no ground to suppose that any such stipulation was entered into, so as to render the plaintiff liable to the loss of the interest sued for. I therefore reverse the order of the lower court, and decree the appeal, with all costs against the respondent.

THE 28TH JANUARY 1850.

No. 177 of 1848.

Appeal against the decision of Syud Mahomed Allee Ashruff, Moonsiff of Behar, dated the 24th of July 1848.

Syud Amjud Allee, (Plaintiff,) Appellant,

versus

Musst. Saadutoon Nissa, for self, and, as daughter and heiress of Mahomed Bukur *alias* Meer Goomance, and Sham Lal Chowdhree, and, after his demise, Nemachund Chowdhree, Lochun Chowdhree, Nehal Chowdhree, Than Singh Chowdhree, and Jea Chowdhree, his sons and heirs, (Defendants,) Respondents.

THIS suit was instituted on the 17th June 1847, to recover from the defendants a 1 anna 6 dam share of mouzah Milawan.

This suit was first instituted by the plaintiff on the 19th January 1843. The moonsiff of Behar, by whom the case was heard, dismissed the claim, and the additional judge confirmed that order. Both decisions were cancelled by the Sudder Dewanny Adawlut, whose printed decision is to be found in pages 176 and 177 of the volume for 1846. The particulars of the case are therein thus related:

“ The plaint sets forth that, on the 16th Phalgun 1248 F., plaintiff purchased a three and a half anna share of the village of Milawan from Akbur Sheer, Musst. Hoseinee, and others, Mahomed Bukur and Saadutoon Nissa being at the time proprietors of a one anna and six dam share, which share plaintiff had already taken on a lease of twelve years from 1245 to 1257 F., on an advance of rupees 165; the annual rent being fixed at rupees 25. After this, on the 5th Aghun 1250 F., Mahomed Bukur and Saadutoon Nissa, without any intimation to the plaintiff, sold their share to Sham Lal for Sicca rupees 200, refusing the same sum from plaintiff, who claimed the right of pre-emption under the law, in virtue of the portion of the estate already possessed and held by him.

“ Of the defendants, Sham Lal alone made answer to the plaint; and it is only necessary to state that he denied its correctness; asserting the purchase to have cost him rupees 400, no farm lease to have been granted to the plaintiff, and no advance to have been received from him, but that he, plaintiff, is a recent purchaser of the portion he possesses and not an hereditary proprietor, and has no right to the

preference he claims in regard to the purchase, and, finally, that the lands have been resumed by Government and a settlement made for them with him, Sham Lal.

“ Upon the ground of this resumption of the lands by Government and the settlement entered into for them with the purchaser, Sham Lal, the moonsiff dismissed the claim to the right of pre-emption on the part of the plaintiff.

“ In appeal, the additional judge also dismissed the claim, on the ground of appellant (plaintiff) having been a purchaser within the recent period of three years, of the portion of the estate held by him, under which fact he had not the right of preference which he sought to establish.

“ The additional judge’s interpretation of the law on this subject is manifestly erroneous as is that of the moonsiff; and without entering further into the case on other points, the Court cancels their decisions, and direct that the proceedings be returned, that the case may be disposed of on its merits.”

The suit was accordingly reinstated on the file of the moonsiff, who, on the 27th October 1846, dismissed it, owing to the plaintiff’s default. The judge confirmed this order on the 19th May 1847, and, on the 17th of the month following, the plaintiff renewed her claim.

The plaint and answer are the same as in the case of which the Sudder’s decision has been above quoted. But Saadutoon Nissa, who, in the first instance, gave no answer, now comes forward in support of the plaintiff’s assertion, that the price of her share obtained from Sham Lal was only rupees 200.

The moonsiff gave no credit to the plaintiff’s statement, that the price paid for the share claimed by the plaintiff, was only rupees 200. He considered that Saadutoon Nissa had gone over to the plaintiff: and regarding the statement of the defendant, Sham Lal, with respect to the price, to be well proved by the deed of sale and the witnesses to it, he dismissed the claim of the plaintiff.

JUDGMENT.

I regard it as an improbable circumstance that the plaintiff (appellant) should have been ignorant of the sale, as he alleges, for one month and thirteen days after its conclusion, for there was no precaution or secrecy observed in the transaction, to account for the plaintiff not hearing of it.

The plaintiff alleges that he sent what he heard was the price of the share, to both seller and purchaser, but as the sum sent was not the price as stated by the latter, it was his duty, I consider, to have proffered the price said by the purchaser to have been paid, the plaintiff suing, if he pleased, for the recovery of the sum, whatever it might be, taken in excess of the real amount. This is, I consider, a further obstacle to the claim of the plaintiff.

But the suit is altogether untenable, independent of the above considerations. The deed of sale in the purchaser's hands bears the seal and signature of both the sellers, and it was witnessed by nine respectable witnesses, and there is no reason to suspect that it was not genuine. Now the plaintiff would have it believed that the deed of sale is a forgery; that the witnesses, for no personal advantage, have nevertheless lent themselves to support this forged instrument; and that the sellers, for no better motive, have also put their seals and signatures to it.

I agree therefore with the moonsiff in regarding the plaintiff's statement and his witnesses as unworthy of credit, and accordingly uphold the order, dismissing the appeal, with costs.

THE 29TH JANUARY 1850.

No. 127 of 1848.

Appeal against the decision of Sheikh Kasim Allee, former Additional Moonsiff of Gya, dated the 28th of June 1848.

Goodur Saho, (Plaintiff,) Appellant,

versus

Dhoda and Chotun, (Defendants,) Respondents.

THIS suit was instituted on the 7th September 1847, to recover the sum of Company's rupees 137, the principal and interest of a bond, dated the 26th Sawun 1251 F.

The plaintiff states that he brought an action against the defendants in this suit to recover a debt; which was compromised by the defendants' paying him some money in cash, and their executing a bond for the balance; to recover the amount of which is the object of the present suit.

The defendants admit the bond, but plead that they pawned various articles of jewellery with the plaintiff, which, being sold, left in the plaintiff's hands, over and above the sum they were pawned for, rupees 79-6, which was carried to the defendants' credit on account of the bond; in proof of which they produce a receipt of the plaintiff's gomashtha.

In his reply the plaintiff denies that the receipt of the gomashtha is a *bonâ fide* one, and asserts that he has colluded with the defendants and given them a false receipt.

The moonsiff observes that the witnesses corroborate the defendants' statements, and the gomashtha, who has been turned off, admits that the receipt was given by him, on the realization of the amount, which was duly noted in the plaintiff's account books. The moonsiff examined the books, and remarks of them that the articles said to have been pawned by the defendants are truly entered, but in two places there appears as if erasures had been made; that since the gomashtha deposes to the sum of rupees 79-6 having been realized

on account of the bond, the defendants are entitled to credit for it; he accordingly cuts down the claim, decreeing the sum of rupees 20-10 to the plaintiff.

The plaintiff appeals, renewing his denial of the receipt in consideration of any money realized from the defendants on account of the bond, and further pleading that the result of every transaction with the defendants is shewn in his books, and, if the sum stated by the defendants had really been realized, it would have been shown also, and credit allowed them.

JUDGMENT.

The receipt is certainly that of the plaintiff's gomashtha; but he has been turned off and is on bad terms with the plaintiff, and I believe he has now given a false receipt to the defendants to injure his late master. He says that the amount of the receipt was duly credited in the books of his employer, but on a careful examination of them I find no such entry from the date of the bond down to the time of the institution of this suit. The books exhibit every mark of being genuine, and are written during the time of the transactions under review in the hand of the said gomashtha. No entry having been made, I look upon the receipt as a fictitious document, and I am the more confirmed in this view because, had the money been paid, there would have been some note of it in the bond itself. I therefore amend the order of the lower court, and decree the appeal in full of the plaintiff's claim, with costs against the respondents.

THE 31ST JANUARY 1850.

No. 131 of 1848.

Appeal against the decision of Moulree Mahomed Abdool Lutef, former Acting Moonsiff of Jehanabad, dated the 22nd of June 1848.

Chotoo, Appellant in the suit of Kowlaput Tewaree,
(Plaintiff,) Respondent,

versus

The Appellant, and Baboo Gunga Gobind, Defendants.

THIS suit was instituted on the 13th November 1847, to recover rupees 214-9, the amount of a receipt signed by Chotoo, dated the 11th Bysakh 1249 F., or to obtain credit for the same.

The plaint sets forth that the plaintiff was tuhseeldar on the part of Moonnee Beebee, the farmer of Mukhdoom Chuterbaree, pergunnah Ookree. In Bysakh 1249 F., the plaintiff remitted as part collections of the said village the sum of Sicca rupees 201, for which Chotoo, a servant of Gunga Gobind, the husband of Moonnee Beebee, gave a receipt. When Gunga Gobind audited the accounts, he refused to allow credit to the plaintiff for the amount of the said

receipt; and this suit is therefore brought with a view to the recovery of the money.

Gunga Gobind makes answer that as Chotoo, his servant, took the money, but did not enter it in the khata-buhee, or account book, he ought to be made to refund it.

Chotoo denies the transaction altogether, and alleges that the suit has been got up by Moonnee Beebee, to establish a claim to the village of Mukhdoom Chuterbaree, to which she has no right.

The moonsiff decreed the claim against Gunga Gobind, and released Chotoo, charging the defendants jointly with the costs.

Chotoo appeals, and claims exemption from costs.

JUDGMENT.

I see no reason why the usual practice of the courts, in respect to the award of costs, should be departed from in this case. Chotoo, being released from the claim, should have also been exempted from costs. I therefore reverse that part of the moonsiff's orders, and releasing Chotoo from any share of the plaintiff's costs, decree that Gunga Gobind pay his costs.

THE 31ST JANUARY 1850.

No. 132 of 1848.

Appeal against the decision of Moulvee Mahomed Abdool Luteef, former Acting Moonsiff of Jehanabad, dated the 22nd of June 1848.

Chotoo, Appellant in the suit of Kowlaput Tewarce,
(Plaintiff,) Respondent,

versus

The Appellant, and Baboo Gunga Gobind, Defendants.

THIS suit was instituted on the 29th December 1847, to recover Company's rupees 212-14, under the same circumstances as those related in the foregoing case. The parties being the same, the pleadings the same, the moonsiff's decision the same, and the case of appeal the same, it is sufficient to refer to my decision in that suit, and to record that the judgment therein passed is to be considered applicable to this appeal. A copy of it will be placed with the record.

ZILLAH EAST BURDWAN.

PRESENT: R. B. GARRETT, Esq., OFFICIATING JUDGE.

THE 8TH JANUARY 1850.

No. 12 of 1849.

Appeal from the decision of Mahomed Sayem, Sudder Ameen of East Burdwan, dated 13th April 1849.

Gour Barick, (Plaintiff,) Appellant,

versus

Maharajah of Burdwan, Kishen Chunder Roy, Hurree Sing Roy,
and others, (Defendants,) Respondents.

THIS suit was instituted to recover possession of three beegahs and three cottahs of land, said to appertain to mouzah Dhamnarea, with mesne profits, and is laid at rupees 787-2-1.

The appellant (plaintiff) states that in November 1835 he obtained possession of the land in question, by purchase at a sale held in execution of a decree of court on the 31st August 1833, and that nine days afterwards he was ousted by the proprietors of the adjoining mouzah of Kumalgarea, respondents (defendants), who claimed it as a part and parcel of their village, and that he had notwithstanding continued to pay his rents to the proprietors of mouzah Dhamnarea, respondents (defendants), from that time to the present moment.

After a local enquiry, which substantiated the statement made by the proprietors of mouzah Kumalgarea, that the lands belonged to their village and not to mouzah Dhamnarea, or at all events that they had enjoyed possession for 10 or 11 years, the sudder ameen decreed the case in favor of appellants (plaintiffs,) in regard to the restoration of possession, and mesne profits to be liquidated as follows:

Maharajah of Burdwan,..... Rupees 11 15 4

Kishen Chunder Roy, ... 103 3 11 2 3 16

Hurree Sing Roy,..... 76 15 0 1 0 4

and further directed the appellant (plaintiff) to pay his rents from 1256 B. S. to Kishen Chunder Roy and others, proprietors of mouzah Kumalgarea, respondents (defendants.)

The appellant is dissatisfied with this decision, both in regard to the order making the rents payable to Kishen Chunder Roy and others, from 1256 B. S., and also in regard to the calculation on which the mesne profits have been declared.

Kishen Chunder Roy and others appealed against this decision, also as percase No. 14 of 1849, naturally arguing that, if they were entitled to receive the rents from 1256 B. S. from the appellant, they could scarcely be judged liable for mesne profits claimed by appellant for antecedent years, especially as the fact of his possession (which they contend is altogether unfounded) is acknowledged by himself to have extended only over a period of nine days, 11 years ago, (during which interval he took no steps towards a recovery of his alleged rights,) and is moreover certified by a bare receipt to the nazir, which is in itself open to suspicion and insufficient. This case was heard by the late officiating judge on the 26th ultimo, who decreed the appeal, and released Kishen Chunder Roy and others from all responsibility, for the reasons stated in his decision.

JUDGMENT.

The appellant's claim to mesne profits, and his objection to the manner in which they have been calculated, have been settled in regard to Kishen Chunder and others, respondents, by the decision of the late officiating judge above referred to, and he has himself, by a separate petition, relinquished all claim against Hurree Sing Roy and others, respondents. The question for consideration now is the order of the sudder ameen, directing the rents of these lands to be paid from 1256 B. S., to Kishen Chunder Roy and others, the proprietors of mouzah Kumalgarea. It is established beyond a doubt, that these respondents have been in possession of the lands in dispute for at least 11 years: indeed the fact of the lands having been ever previously otherwise occupied is exceedingly doubtful, and certainly is not proved in the case under review: the declaration made by the appellant that he has paid his rents notwithstanding his dispossession to the proprietors of mouzah Dhamnarea, is unworthy of credit, and tends to confirm the suspicion, that there has been collusion between these two parties, to disturb the rightful possession of these lands by Kishen Chunder Roy and others, and to obtain their annexation to mouzah Dhamnarea. Under these circumstances, I am of opinion that Kishen Chunder Roy and others, respondents, are clearly entitled to receive the rents of the lands in dispute, and therefore dismiss the appeal with costs.

THE 8TH JANUARY 1850.

No. 13 of 1849.

Appeal from the decision of Mahomed Sayem, Sudder Ameen of Burdwan, dated 13th April 1849.

Juggessur Sirkar and others, (Defendants,) Appellants,

versus

Kishen Chunder Roy and others, (Defendants,) Respondents.

THIS case of appeal has sprung out of the preceding case No. 12 of 1849, in which Gour Barick was plaintiff.

The sudder ameen's decree contained an order to the effect that the plaintiff Gour Barick should pay the rents of certain disputed lands from 1256 B. S. to Kishen Chunder Roy and others, respondents, the proprietors of mouzah Kamulgarea, whilst the appellants claimed them as a part and parcel of mouzah Dhamnarea.

Gour Barick admits, in his plaint, that he has not been in possession of the lands for eleven years, and that even then he was only so for nine days, and this fact of dispossession is further supported by the ameen's local enquiry when the case was pending in the subordinate court; his story regarding the payment of the rents, during this long period to the appellants, I consider to be totally unworthy of credit. Under these circumstances, therefore, I see no reason for interfering with this portion of the sudder ameen's decision, especially as the option of bringing a regular suit for the lands in question is open, and expressly reserved to the appellants, their claim being one of proprietary right, whilst the original case under review is merely one brought by an under-tenant for possession and mesne profits. The appeal is dismissed.

THE 14TH JANUARY 1850.

No. 155 of 1849.

Appeal against the decision of Peary Mohun Banerjea, Moonsiff of Kytee, dated 13th April 1849.

Sheik Sumsuddeen and others, (Defendants,) Appellants,

versus

Fyzunissa Beebee and others, (Plaintiffs,) Respondents.

THIS case was instituted for the partial reversal of a sale held in execution of a decree of court, for the recovery of possession of lands, from which plaintiffs had been ejected by the purchasers, and for mesne profits.

The facts of the case may be briefly stated as follows: A small estate in the village of Munrezpore was held by one Mahomed Junghee, this man had a family of five sons and two daughters, Mahomed Golam Shah, Golam Nusuf, Golam Jelanee, Golam Mowlah, Golam Sumsuddeen, Lall Beebee, and Chand Beebee, against three of these, viz., Golam Nusuf, Golam Mowlah, and Golam Sumsuddeen, one Kishen Mohun Bose had obtained a decree, in execution of which, an eight anna share of a tank and one beegah of land belonging to the above estate, was attached and sold to Ramdhon Bose and Mudun Mohun Bose. These persons, on the strength of this purchase, dispossessed plaintiffs of about two beegahs and sixteen cottahs of other land in excess of the lot sold, and afterwards disposed of what they had acquired to Sumsuddeen and other defendants (appellants,) against whom the plaintiffs now preferred their claim. The plaintiffs are the heirs of five children of Mahomed Junghee, viz., Mahomed

Golam Shah, Golam Jelannee, Golam Mowlah, Lall Beebee, and Chand Beebee; although Golam Mowlah was one of the three defaulters against whom the decree had been obtained as above stated, yet his heirs came forward to contest the sale as proprietors under a deed of gift from him.

The defendants urge that the case cannot be tried on its merits for a variety of reasons; first, the deed of gift on which the heirs of Golam Mowlah rest their claims, has been already set aside by the court in a previous case; secondly, that in another suit Golam Jelannee is represented to have died without heirs, though Fuzul Hosein now comes forward as his grandson; thirdly, Mahomed Golam Shah died before his father, and consequently his children can have no claim as heirs of Mahomed Junghee; fourthly, the institution of this suit is opposed to the statute of limitations, as years should be calculated as consisting only of 360 days, and 12 years on this computation have elapsed; fifthly, the heirs of Golam Sundannee are not correctly represented, there are others besides those named who should have been made parties to the suit; sixthly, the residence of Fyzunissa Beebee is falsely stated to be in Mumreypore, whereas it is at Sundrooh, to the south of Calcutta; seventhly, the name of one of the heirs of Golam Nusuf has also been omitted; eighthly, that Amjud Ali, heir of Chand Beebee, and Lall Beebee, are residents of another district, and in all probability have had nothing to do in signing the vekalutnamah in this case; and ninthly, that the lands in dispute do not belong to plaintiff, but have always been in possession of defendants by inheritance.

Rahadanissa Beebee, a younger daughter of Golam Sundannee, alleges that her name, as one of the heirs of her father, has been omitted with a view of injuring her right to a share in the property.

The moonsiff overrules the objections of the defendants in regard to the residence of Fyzunissa Beebee, the omission of names amongst the heirs of the children of Mahomed Junghee, and to jurisdiction under the law of limitation. He considers it to be established, that the lot sold in execution of the decree of Kishen Mohun Bose, was the property of all the heirs of Mahomed Junghee, and therefore could not be liable for the debts of only three of them; and that the claim of the plaintiffs for the dispossession of the lands not included in the sale, which defendants (appellants) had wrongfully usurped, is clearly proved by the evidence of witnesses and the papers of the case. He therefore reverses the sale as far as the shares of the heirs of Golam Jelannee, Lall Beebee, and Chand Beebee are concerned, and restores to them possession of one-third of the portion of the estate sold, and also of one-third of the land from which they had been ejected by the defendants; he further restores to the descendants of Golam Mowlah in their capacity as heirs (setting aside their claim under the deed of gift) one-sixth of the lands only from which they had been ejected.

The appellants are dissatisfied with the decision, and plead to the same effect as they did in the first answer.

JUDGMENT.

I quite concur with the moonsiff in the manner in which he has disposed of the objections of the appellants (defendants) in regard to jurisdiction, either on account of informality in the institution of the suit, or the expiration of the period within which the claim ought to have been preferred: in both instances their pleas fall to the ground. The omission of the name of any of the sharers or heirs, even if it has occurred, will not bar the trial and decision of this case, as the rights and interests of no one but of those actually named are in any way affected either for better or worse. The original defaulters had only a partial interest in the property sold, and those interests only were or could be transferred; the claims of the heirs of Golam Shah are not recognizable in court, he having died during the lifetime of his father; but considering that the plaintiffs' claims to the extent decreed have been fully established by the evidence of witnesses adduced, and further even supported by the deposition of one of the witnesses brought forward on behalf of the defendants, I am of opinion that the moonsiff's decision is quite correct, and in no respect open to revision. I therefore uphold it, and dismiss the appeal.

THE 15TH JANUARY 1850.

No. 154 of 1849.

Appeal against the decision of Peary Mohun Banerjea, Moonsiff of Kytee, dated 13th April 1849.

Sheik Sumsuddeen and others, (Defendants,) Appellants,

Idrutt Hosein and others, (Plaintiffs,) Respondents.

THIS case is precisely the same as the one decided yesterday, No. 155 of 1849, with this one exception that the plaintiffs in this case are the heirs of the parties against whom the decree of Kishen Mohun Bose was passed; they have nothing therefore to object to the sale of their rights and interests in the portion of the estate sold; but they have preferred this suit to recover possession of the lands from which they were ejected by the purchasers, in excess of what was included in the sale papers. The same arguments are used both sides, and the same reasons suggest the same decision.

The moonsiff decreed the plaintiffs' claim, and I see no reason for interfering with the decision, and therefore, on the grounds specified in No. 155, decided yesterday, I dismiss this appeal, and confirm the decree of the lower court.

THE 15TH JANUARY 1850.

No. 220 of 1849.

*Appeal from the decision of Mr. J. S. Bell, Moonsiff of Burdwan,
dated 21st April 1849.*

Bushirunissa Beebee, (Defendant,) Appellant,

versus

Surroop Deb, (Plaintiff,) Respondent.

THIS case was instituted for the recovery of rupees 47-4, principal and interest, due on a bond executed by the husband of appellant (defendant) in favor of respondent (plaintiff).

It appears that appellant's husband, Fuzur-ool Rahman, had certain daily transactions in the article of rice with the respondent, and on the adjustment of accounts the sum of rupees 23-10 was found to be due to respondent, which Fuzur-ool Rahman was at that time unable to pay, he therefore signed a bond for the amount payable in Assin 1244 B. S. The man died on the 25th Bysakh 1249 B. S., the debt being still unsettled, and consequently the plaintiff (respondent) sued for the principal, rupees 23-10, and interest to the same amount, making the claim rupees 47-4.

The defendant (appellant) states that she is not the sole heir of her late husband: that his brother and three sisters are with herself joint heirs and in joint possession of the property left by him; and that as these individuals have not been made parties to the suit a nonsuit should have been declared. She also denies the execution of the bond by her husband.

The moonsiff remarks that the bond is proved, and adds that as defendant is not sole heir of her husband, she cannot be made personally responsible for his debts, whose property is alone answerable, and therefore decrees the case in plaintiff's favor on Tufussul Rahman's (a mistake for Fuzur-ool Rahman's) property.

This decision is clearly erroneous. In a case of this description it is not sufficient to say that the property of a deceased person is responsible for his debts; there must be persons who are in possession of that property, and these persons are liable to the extent of such property as they have acquired by inheritance. The moonsiff, in his decree, states that plaintiff is not the sole heir of her late husband, thereby implying that there are others as stated by the defendant; whoever they are, I conceive that they must be made parties to the suit before a decree for the recovery of the debt can be passed. As the case now stands, I consider the moonsiff's decision to be irregular and incomplete. I therefore reverse the decree, and return the case for further consideration.

THE 15TH JANUARY 1850.

No. 232 of 1849.

*Appeal from the decision of Peary Mohun Banerjea, Moonsiff
of Kytee, dated 2nd May 1849.*

Rada Madub Mitter, (Defendant,) Appellant,

versus

Kishoree Dossea, (Plaintiff,) Respondent.

THE plaintiff states that her husband, Sreenath Mijoomdar, on the 23rd Falgun 1236, purchased from one Kishen Monee Dossea, a small estate in mouzah Arooe, for the sum of rupees 96; that a person named Mudun Mohun Gosaye obtained a decree against Kishen Monee Dossea and others, in satisfaction of which this talook was attached and sold on the 2nd Chyete 1248 to Luckee Preeya Dossea, in the name of her brother Rada Madub Mitter, (defendant) appellant, for Company's rupees 68; that plaintiff presented a petition objecting to the attachment, but the case was struck off, and she now sues for the reversal of the sale and recovery of possession and mesne profits from 1249 to 1254, rupees 19-5-4-15-2.

The defendant Mudun Mohun Gosaye decreedar, admits that, through ignorance of the transfer of the property to plaintiff, he had attached and sold the estate in satisfaction of his decree.

Rada Madub Mitter, defendant, states that as the decreedar attached the property so he purchased it; that Kishen Monee was in possession anterior to the sale, and that plaintiff's name only was recorded in the zemindar's books.

The moonsiff remarks that it is clearly proved that Sreenath Mijoomdar, husband of plaintiff, was in possession of the lands which were sold in satisfaction of a decree issued against Kishen Monee Dossea, between whom and the plaintiff there was no connection; he therefore upsets the sale, and decrees possession with mesne profits and costs against Rada Madub Mitter purchaser, and Mudun Mohun Gosaye decreedar.

The appellant contends that he is not liable for the mesne profits, as he professes to have made the purchase in good faith, and trusting to the honest proceedings of the decreedar, and prays for a reversal of the moonsiff's decision to this extent.

JUDGMENT.

It is difficult, considering the fysullahs of former years handed in by the plaintiff (respondent,) that the appellant, whose own sister is the talookdar of the village, and who is himself the ijaradar, and who had in that capacity brought suits for arrears of rent against the respondent for this very land, was ignorant of the true state of the case when he purchased the property. I cannot but believe that he was actuated by improper motives when he contributed so

materially to eject the plaintiff from his holding under circumstances so unjust, and therefore am of opinion that he has been very properly held liable, with the decreedar, for the losses to which the respondent has been subjected. I dismiss the appeal, and confirm the order of the lower court.

THE 17TH JANUARY 1850.

No. 23 of 1849.

Appeal from the decision of the Sudder Ameen of Burdwan, Mahomed Sayem, dated 19th June 1849.

Chand Beebee and others, (Defendants,) Appellants,

versus

Sumboo Chunder Ghose, (Plaintiff,) Respondent.

THIS suit was instituted to reverse the proceedings of a talookdar cancelling a lease under the provisions of Clause 4, Section 18, Regulation VIII. of 1819, and to recover possession of the land, with mesne profits.

The plaintiff states that on the 5th Poos 1251 B. S., he purchased from Fakeer Chund Sein, and Ram Dyal Sein, for the sum of rupees 49, a parcel of land, viz. beegahs 35-13-8, bearing a jumma of Sicca rupees 39, in the village Rusweekhund, of which the defendant was talookdar; that in 1252 B. S. he paid his rents and obtained receipts for the same, but the talookdar, in collusion with the parties from whom he had purchased the lease of the lands, prosecuted them, Fakeer Chund Sein and Ram Dyal Sein, summarily in the collector's office for arrears amounting to rupees 32, and that as they assented to the justice of the claim, the deputy collector before whom the case was pending, notwithstanding his opposition, decreed the case in favor of the talookdar, defendant (appellant); that then the talookdar made other arrangements for the management of the lands with one Sowaubuddeen Mulik. The plaintiff further states that after the decision of the summary suit he appealed to the collector, who directed a re-investigation of the case by the deputy collector, by whom the former order was adhered to; that he applied again to the collector, and his case was then sent to the assistant. This officer permitted the plaintiff to deposit the amount of the claim, and so left the case, without however interfering with the decision of the collector. The plaintiff at last lays his claim in the civil court where he obtains a decree to the full extent on sufficient and satisfactory evidence,—the very parties, who sold the lease in Poos 1251, and then acquiesced in the justice of the claim against them for arrears for 1252 in the deputy collector's office, now coming forward and acknowledging the transfer of their interests to the plaintiff as stated by him.

Chand Beebee, talookdar, objects to the decree of the sudder ameen in so far as it renders her as well as Sowaubuddeen liable for the mesne profits. She contends that in the deputy collector's office an arrear was adjudged to be due from the plaintiff, and that therefore she was fully justified by Section 18, Regulation VIII. of 1819, in acting as she did; that the transfer was not recorded in the talookdaree accounts; that the purchaser derived all the benefit from the transaction, and has enjoyed the profits of the lease; that therefore she should not be made liable for the mesne profits during the period of the plaintiff's ejection.

JUDGMENT.

It is quite true that Clauses 4 and 5, Section 18, Regulation VIII. of 1819, authorize a zemindar to cancel a lease and make other arrangements for the management of the land after an arrear has been adjudged to be due, but it will not justify a zemindar, nor will it exempt him from liability, if he carries out its provisions in bad faith. In this case the plaintiff has been very hardly used, and there is strong presumptive proof for believing the talookdar to have had a large share in the transactions. The sellers' assent to the claim of the talookdar, which they well knew, and afterwards when the evil was done, virtually admitted, was not due from them, but from another, *i. e.* when they confessed to the transfer of the lands to the plaintiff, must have been given at the instigation of the appellant, and it is impossible to believe that he was or could be ignorant of the transfer. I consider, therefore, that the decree of the sudder ameen is in every respect equitable and proper, and accordingly dismiss the appeal.

THE 26TH JANUARY 1850.

No. 255 of 1849.

Appeal from the decision of Pearee Mohun Banerjea, Moonsiff of Kytee, dated 30th May 1849.

Kishen Doss and others, (Defendants,) Appellants,

versus

Ram Jewun Mookerjea, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff to recover damages from defendant for assault and abusive language.

Plaintiff states that his servants and defendants were quarrelling about some cows belonging to the latter, which had trespassed on a sugar-cane field of the former; that he went out to see what was

the matter, when defendants abused him and knocked him down ; that he is a respectable brahmin, and that to be abused by persons of the defendants' caste is a great disgrace : he therefore sues for damages to the amount of rupees 64.

The defendants deny the whole of the charge, and bring forward witnesses to prove a negative and refute the evidence of the plaintiff, but I agree with the moonsiff in thinking they have failed in doing this. That officer decreed damages to the extent of rupees 20 against the four defendants, in fact mulcting them in rupees 5 each, together with the costs, and I see no reason for interfering with the decision, and therefore dismiss the appeal, and confirm the moonsiff's decree.

THE 25TH JANUARY 1850.

No. 270 of 1849.

*Appeal from the decision of Mahomed Sayem, Sudder Ameen Moonsiff,
dated 23rd May 1849.*

Sowaubuddeen, (Plaintiff,) Appellant,

versus

Gopeenath Deb and others, (Defendants,) Respondents.

IN this case the plaintiff had sued the defendants for a reversal of sale held under the provisions of Regulation V. of 1812, and had obtained a decree from the sudder ameen for the reversal and for refund of proceeds, but he now appealed on the ground that the sudder ameen had not adjudged damages under the provisions of Section 6, Regulation XVII. of 1793.

It appears from the papers in this case, and from the circumstances connected with the case No. 23 of 1849, decided in this court in appeal on the 17th instant, that, on account of the land lately occupied by plaintiff, there had been much dispute between him and other parties, with whom the defendants are alleged to be closely allied, and no doubt the attachment and sale of plaintiff's property for an arrear, said to be due from another party to defendants, was done merely to harass and annoy the plaintiff. The law declares that in such cases damages shall be paid, but, supposing that it is discretionary, I am of opinion that the defendants acted knowingly and maliciously, and are therefore entitled to no consideration, and should be made liable for the full amount of damages, which, in modification of the sudder ameen's decree, I hereby award, as required by the enactment above referred to.

THE 28TH JANUARY 1850.

No. 254 of 1849.

*Appeal from the decree of the Moonsiff of Kytee, Peuree Mohun .
Bawerjea, dated 26th May 1849.*

Jugessur Sircar, guardian of Bindrabun Beharee Mitter and others,
minors, (Defendant,) Appellant,

versus

Nitro Maye Debee, mother of Charadah Pershad Roy, (Plaintiff,) Respondent.

THE moonsiff, in his decision in the original case of enhancement of revenue, as instituted by the plaintiff (respondent,) absolved the appellant from all liability, but saddled him with his own costs, as he was alleged in the ameen's report to have been in possession of the lands on account of which the enhancement was claimed. The moonsiff remarks that it is not necessary to try the question regarding the benamie purchase, or the possession of the lands by Jugessur Sircar and others, and further on in his decree he adds that, as this question of possession by Jugessur Sircar, as reported by the ameen, does not require to be investigated, therefore that party are liable for their own costs. Now this appears rather indifferent logic. The moonsiff declares that it is not necessary to decide a particular point, and yet he does virtually decide it, and acts upon the decision, for manifestly the appellants would not be liable for their own costs, unless they were in possession, and the refusal to allow them their costs is in fact a decision that they were so. It is quite clear, I think, that if the point was not tried, it was not proved, and therefore it was irregular to saddle a party against whom nothing is proved with the costs of suit. I therefore decree the appeal, and reverse the moonsiff's decree *quoad* the costs of appellant.

ZILLAH WEST BURDWAN.

PRESENT: HENRY C. HAMILTON, ESQ., OFFICIATING JUDGE.

THE 17TH JANUARY 1850.

No. 18 of 1848.

*Appeal from the decision of Moulvee Assudoolah, Moonsiff of Radanuggur,
dated 27th December 1847.*

Bungsee Dhur Surmah, (Plaintiff,) Appellant,

versus

Gyaram Thacoor Doss, (Defendant,) Respondent.

SUIT to recover principal, rupees 114, interest, rupees 117-4, total Sicca rupees 231-4, or Company's rupees 246-13½, due on a kurarnamah.

Plaintiff states that one Gocoolanund Sein took out execution of a decree No. 235, for rupees 571-2-12-1 against Heeralal Ghose, and sold it to the defendant for rupees 200, and as there were money transactions between him and Gocoolanund, the latter gave him a buraut for the money on defendant, but as defendant was unable to pay down the cash, he gave him (plaintiff) a kurarnamah, promising to liquidate it on the 15th Assar 1246 B. S. On the 19th Jyete 1248 B. S., plaintiff states, defendant paid him rupees 86, as per receipt on the back of the bond, and not having liquidated the remainder, he sues him.

Defendant says that he and his brother, Khettroo Mohun Thacoor, squared their accounts with plaintiff, and a balance of rupees 294 having been found to be due, they made over to plaintiff for six years from 1248 to 1253 B. S., 29 beegahs 17 cottahs of mal and lakhiraj land, called Nubboohdan, &c., in mouzah Radanuggur. An agreement was entered into on the 19th of Jyete 1248 B. S., and plaintiff gave him a rooka on plain paper agreeing to restore this land to him (defendant) in 1254 B. S. Defendant then states that plaintiff let out the lands at a jumma of rupees 49 per annum, to Ram Kunhye Mookerjea for the period of six years, taking from him a kubooleut, dated the 27th Srawun 1248 B. S. He collected the rents, and on the ryot falling into arrears plaintiff sued him for his rent from 1248 to 1250 B. S., suit No. 188, and on the strength of this very kubooleut he obtained a decree and was paid his demand. Defendant urges that all these transactions have been kept back by plaintiff, and he now sues wrongfully; he denies ever

having paid any thing on the bond as alleged by plaintiff, produces plaintiff's rooka or ekrarnamah, and refers to his documents in refutation of the plaint.

The moonsiff says that he took up this and a miscellaneous case, No. 133, simultaneously, and it appeared that plaintiff was unable to prove it and it was a bad one; further, as it was clear from another case, No. 188, that this very sum of rupees 200 had been mentioned in the kuboolent which plaintiff had filed, and a copy of which had been left with the missil, it was wrong for plaintiff to demand it twice from defendant; again, although plaintiff held the kurarnamah, defendant had produced the plaintiff's rooka, and by examining it, and the evidence of the defendant's witnesses, it was evident that the amount claimed had been included in the ekrarnamah for rupees 294, dated 19th of Jyete 1248 B. S., as stated by defendant: consequently the moonsiff dismissed the plaintiff's case, with costs.

In appeal, plaintiff urges that defendant never appeared until the case was proceeding *ex parte*; he refers to the particulars given in his jowaub-ool-jowaub; argues that if the bond for rupees 200, on which he sues, had been cancelled or included in the one for rupees 294, as alleged by defendant, some mention thereof would have been entered in the latter bond, which refers *specialty* and *only* to *one* money transaction. He relies on the evidence he has produced, points out various contradictions in that of defendant's witnesses, and after alluding to various other matters wishes to make out that Ram Kunhye's kuboolent, which he filed in case No. 188, had been exchanged.

Gyaram, defendant, replies, the case was heard, the appeal admitted by the late judge, Mr. Garstin, on the 7th of March 1849, and postponed pending enquiry into plaintiff's statement that this kuboolent had been exchanged.

I have carefully gone through the nuthees of the several cases mentioned above, and I see no reason whatever for questioning the judgment of the lower court, while I cannot too strongly condemn the statements of the plaintiff, which, in my opinion, are utterly false. By examining the original and its copy of the kuboolents, dated the 27th of Srawun 1248 B. S., given by the ryot, Ram Kunhye Mookerjea, to plaintiff, after he had obtained defendant's lands for six years, in consideration of his having lent him at various times rupees 294, they both agree, and there is not the slightest reason to suspect that the original has been exchanged. Further, in the last bond for rupees 294, dated the 19th of Jyete 1248 B. S., and the corresponding rooka (duly stamped) left in defendant's possession and filed in court, it is clear that all outstandings, including the bond for rupees 200, had been squared between plaintiff, defendant, and his brother, up to that date; and the addition of the words *ekduffa* at the end of the first line on the bond, dated the 19th

of Jyte 1248 B. S., to make it appear that *the* bond referred *only* to *one* transaction, is too plain to be mistaken, hence plaintiff's statement to this effect is false, and although he was called upon to produce this document on the 7th of March 1849, he never did so until the 20th of December 1849, and then only *in person* and not by his vakeels.

Holding the above view of this case, I have no hesitation in confirming the decree of the lower court, and I hereby dismiss the appeal. Costs throughout the courts to be paid by appellants.

THE 17TH JANUARY 1850.

No. 40 of 1848.

Appeal from the decision of Moulvee Mazzum Hossein, Moonsiff of Madhubunge, dated 29th December 1847.

Govind Ram Pruthihar, Plaintiff,

versus

1, Huree Churn Roy, 2, Kureem Khan, and 3, Fukeer Doss Khan,
Defendants.

Huree Churn Roy and Kureem Khan, Appellants.

SUIT laid to recover the sum of rupees 86, principal, and rupees 55-13-2, interest, total rupees 141-13-2.

Plaintiff states that the defendants jointly borrowed rupees 86 from him, agreeably to a bond, dated the 15th of Aghun 1248 B. S., promising to give him, during the month of Poos 1248 B. S., rupees 55 worth of rice, 29 rupees of goor, and 2 rupees soorsoo. Failing to pay him, plaintiff sued defendants for rupees 133-1-5, suit No. 262, but having been nonsuited on 23rd April 1847, he has brought this action afresh.

Fukeer Doss Khan, defendant, denies the whole transaction, says he can write, and has been separated from his father, Kureem Khan, defendant, since 1246 B. S., and if he had joined in any bond, he would have signed it.

Kureem Khan, defendant, acknowledges to the three defendants having jointly given the bond; urges that he gave a buraut in favour of Khettur Mohun Neogee for rupees 50, in part of the above rupees 86, on account of revenue, which was due by him from mouzah Ooturhar Arazee mehal, and as the plaintiff did not pay the money, the gomastah attached his (defendant's) crops, whereupon plaintiff gave him rupees 50, and rupees 2-8 for his expenses, and, in return for this cash, defendant says, he made over to plaintiff, on the 5th of Maugh 1248 B. S., a certain quantity of rice and goor. He admits that the bond does not concern Huree Churn and only himself.

Huree Churn follows in, and relies on the reply of the previous defendant.

The moonsiff is of opinion that the case is proved against Nos. 1 and 2; and not No. 3: he does not credit defendants' statement, particularly as they failed to prove it although called upon to do so; he thinks that, as Hurce Churn signed the bond, he is responsible, and as Fukeer Doss Khan can write, he surely would have signed the bond, had he given it to plaintiff jointly with others. He therefore decrees the case in plaintiff's favor against defendants Nos. 1 and 2, and releases No. 3.

Without entering further into the merits of the case, I find it is incomplete, and that the moonsiff has decided it without taking any evidence, relying only on copies of such evidence as was taken when plaintiff was formerly nonsuited. I remand the case therefore for trial *de novo*, decreeing the appeal. Value of stamp paper to be refunded in the usual way.

THE 23RD JANUARY 1850.

No. 41 of 1848.

Appeal from the decision of Moulree Assudoolah, Moonsiff of Radunuggur, dated 10th January 1848.

Narain Ghuttait, Plaintiff,

versus

Rammohun Goshein and others, Defendants.

Rammohun Goshein, Appellant.

SUIT to obtain possession of 2 beegahs of jaghire land, with 9 years' wassilaut, laid at rupees 62-4.

Plaintiff states that one Gopal Bhandaree, the former sirdar ghutwal of ghaut Beersingah, being dismissed, he was appointed in his room, and obtained possession of his lands in 1245 B. S. With respect to 2 beegahs of land called Puttoaria, the defendant, Goshein, filed a petition against him in the foudjdar court, (No. 674,) whereupon the joint magistrate directed, on the 13th of February 1847, that the Goshein should be retained in possession, and plaintiff might, if he so pleased, sue him in the civil court, he consequently sues, &c.

Government, having been made a party to the suit, reply that they are in no way concerned in it, and have never dispossessed, or ordered plaintiff to be dispossessed.

Rammohun Goshein, defendant, replies by claiming the land as his own lakhiraj; he urges that the joint magistrate always puts ghutwals in possession of their jaghires when vacancies occur in any way, and, had the land at issue been ghutwally, plaintiff would have surely obtained possession, and shewn his receipt for the same: plaintiff is the brother-in-law of Gopal Bhandaree, the dismissed ghutwal, they live together, and have evidently connived in saying that the latter was all along in possession. He states that in 1249 B. S., the ghutwal, having brought forward Kishoree Lohar as his ryot, filed a

petition against him (defendant) in the foudaree court, but it was dismissed; that he has always been in occupancy, and plaintiff should have brought his action jointly against him and his brothers, which he has not done; that in 1253 B. S., plaintiff dispossessed him (defendant,) on which an Act IV. of 1840 case was instituted, the land attached, &c., and he (defendant) obtained a decree, &c.

In the opinion of the moonsiff, defendant's three witnesses cannot be credited, and defendant has not produced any documentary proof of the lands in dispute being his lakhiraj property: he believes the plaintiff's statement and his witnesses: and as it appeared from a list which was produced by plaintiff, that there were 28 beegahs of land held as a ghutwally jaghire in mouzah Beersingah, he decreed the case, with costs, &c.

In appeal, it is urged that the lakhiraj title should have been enquired into under Section 30, Regulation II. of 1819, that the moonsiff has no authority to decide the case, that he has already been kept in possession under Act No. IV. of 1840, and he filed copies of decisions, &c., but they were not attended to, &c.

JUDGMENT.

In the first place, the moonsiff has not disposed of defendant's plea as to the party who should have been sued; secondly, he has taken no proof and instituted no local enquiry by which it can be stated that the 2 beegahs at issue do in reality pertain to the 28 beegahs of jaghiredary ghutwally land situated in mouzah Beersingah; and as he has simply decided the case on oral evidence, reversing thereby several judicial decisions, I cannot, I confess, confirm his decree. I therefore decree the appeal, and remand it for trial *de novo*, and consider that, as the right to hold rent-free has not been contested, the moonsiff has jurisdiction in the matter. Value of stamp paper to be refunded in the usual way.

THE 24TH JANUARY 1850.

No. 68 of 1848.

Appeal from the decision of Baboo Bisheshur Chuckerbutty, Moonsiff of Bancoorah, dated 22nd January 1848.

Seetanath Panjah, (Plaintiff,) Respondent,

versus

Bunkut Sing Baboo and others, Defendants.

Bunkut Sing Baboo, Appellant.

SUIT for the recovery of arrears of revenue for the year 1253 B. S., laid at rupees 87-9-8, principal, and rupees 6, interest, total rupees 93-9-8.

This suit was originally instituted in the Bishenpore moonsiff's court, but was eventually transferred to this moonsiff for decision.

Plaintiff states that a parcel of land in mouzah Rugonathpore, &c.,

appertaining to talooq Sheeromoneepore, is held with a jumma of Sicca rupees 82-2, in the names of various ryots, and this rent was always paid; but Bunkut Sing, defendant, having laid claim to the land in dispute in virtue of a mocururee pottah, dispossessed the former talooqdar, Beer Chunder Chatterjea, whereupon Beer Chunder brought an action, No. 353, in the Bishenpore moonsiff's court, and obtained a decree against him, Bunkut Sing. Bunkut appealed, No. 168, and the decree was amended, the land to continue with Bunkut and the revenue to be paid to the talooqdar. Plaintiff bought the putnee of lot Sheeromoneepore, and, having obtained possession, demanded his rents from the ryots; but as they will not pay, he has sued them.

Bunkut Sing Baboo, defendant, replies that he obtained a mocururee pottah of the land at issue in 1241 B. S., at an annual jumma of rupees 50 from Gungapershaud Opadya, the former talooqdar; has paid his rent; has received possession; that his pottah has been upheld, and that the enhanced jumma is incorrect, &c.

Rugonath Sing and others, defendants, reply that they have no concern in the case and can prove it by documents, and that they are in possession of lakhiraj land by will from Domun Sing Thacoor, &c.

The moonsiff is of opinion that this suit cannot lie against these defendants under Clauses 2 and 3, Section 11, Regulation VIII. of 1819, because Bunkut Sing's pottah has been cancelled, and possession of the talooq was given to the former talooqdar, Beer Chunder; and as the plaintiff takes the place of the former putneedar, he must sue the ryots who cultivate the lands without reference to Bunkut Sing, from whom he cannot demand his revenue at rupees 82-2. He considers this case may be brought under Clause 3, against the ryots, but not against Bunkut, under Clause 2, Section 11, Regulation VIII. of 1819, he explains the evident meaning of the judge's order in appeal No. 432, and argues that Bunkut, defendant, is evidently not a ryot, under Clause 3, Section 11 of the above enactment, and any lien he held was possessed by him under Clause 2, Section 11, which has lapsed.

Under the above and for other reasons the moonsiff nonsuits plaintiff.

Bunkut Sing Baboo, defendant, appeals in order that his possession may be retained, in conformity with the orders he alleges were issued in appeal No. 432, and he urges that the revenue should be received from him and not from the ryots.

JUDGMENT.

I have carefully gone through the case and find that the judge's order in appeal No. 432, dated the 14th of March 1844, is clear enough; it declares the alleged mocururee pottah of Bunkut Sing to be null and void under Clause 2, Section 11, Regulation VIII. of 1819, and it rules that the new putneedar or auction purchaser can only re-

cover his rents under the Clause 3, of the same section and enactment, how therefore Bunkut, defendant, can now come forward and urge that he is the proper party from whom plaintiff should demand and recover his rents, I do not perceive. He is not a khoddkasht or other ryot indicated in Clause 3, and his mocururee rights have all lapsed (in consequence of the lot having been sold) under Clause 2. The moonsiff's order, I am of opinion, is perfectly correct, and plaintiff should sue the ryots for his rents, and if Bunkut or any other person should possess any rights under Clause 3, Section 11, Regulation VIII. of 1819, they can then assert them. It is impossible to retain Bunkut's alleged possession. I therefore reject his appeal, with costs, confirming the decree of the lower court.

THE 25TH JANUARY 1850.

No. 46 of 1848.

Appeal from the decision of Moulree Asadoollah, Moonsiff of Radhanagore, dated 5th January 1848.

Gopal Chunder Chowdry, (Plaintiff,) Respondent,

versus

Jeykishen Banerjea, tehsildar, (Defendant,) Appellant.

SUIT to obtain a receipt for rupees 21, which was paid as revenue to defendant on the 28th Pous 1254 B. S.

Plaintiff states that defendant is the tehsildar, on the part of the Burdwan rajah, of lot Beliarah, and he was appointed by him gomastah of mouzah Takeramchunderpoor in 1253 B. S. On various dates up to the 8th of Pous of that year, he remitted rupees 265 to defendant, and obtained dakhilas, but on the 28th of Pous, he says, he paid over to defendant rupees 21 in the presence of several people, but he received no receipt, and although he has frequently asked for it, he (defendant) will not give it to him, and he now sues him for it and double its amount.

Defendant replies that plaintiff was the gomastah, and that on the 10th of Assin 1253 B. S., he only remitted to him rupees 49, as per his dakhila and receipt books; and as he would not render his account, &c., Purshunnoo Mookerjee was deputed from the rajbaree to look after matters; whereupon plaintiff filed his accounts, and a deficit of rupees 257-0-13 was found to be due against him, to which he agreed, signing a receipt for the same on the 30th Maugh 1253 B. S. On the 17th of Falgoon 1253 B. S., Hurreepershaud, plaintiff's brother, paid him, defendant, rupees 25, and obtained his dakhila. Plaintiff's statement was false, and he (defendant) was at Gurbettah from the 7th to the 28th Pous as he can prove.

The moonsiff urges that, although defendant denies plaintiff's statement, has named twelve witnesses, and wishes to prove his *alibi*, still he has not brought his witnesses and has not taken proper measures

to do so; and plaintiff, on the contrary, having proved his case by four witnesses, he decrees it in his favor with double the amount of claim, with interest, under Section 63, Regulation VIII. of 1793.

In appeal, defendant urges that, if the alleged payment on 28th Pous was correct, plaintiff would not have been silent on the subject on the 17th Falgoon. Plaintiff is not his gomastah, but the servant of the Burdwan rajah, whose sunnüd he obtained, and that a summary suit has been given against him. Further, he advances that his witnesses were duly pointed out, and subsequently, in consequence of their absence ishtehars were issued; that though he was called upon to apply on oath for their apprehension under Act No. XVII. of 1845, on the 28th of December 1847, he was unable to do so, being absent; and that the moonsiff should have listened to his vakeel's alleged application for a further period, instead of decreeing the case against him on the 5th of January 1848.

JUDGMENT.

On examining the record, I find that defendant used all endeavours and spared no expense in causing the attendance of his witnesses, and it is not likely that at the last he would forfeit all, by not appearing himself within the two days which were allowed him on the 28th December 1847, on which date a roobukary was issued by the moonsiff, although there is no proof that plaintiff's vakeels were made aware of it. I find too that defendant did file various accounts, agreeably to which, had his witnesses appeared, his case would have assumed a very different aspect. Further, as there are strong grounds for suspecting the testimony of plaintiff's witnesses, when the date of the occurrence of each transaction is compared, I confess I think defendant should have an opportunity granted him of proving his accounts, his *alibi*, and his case. I direct therefore that the appeal be decreed, and the case be remanded for the purpose indicated above to the lower court. Value of stamp paper to be refunded in the usual way.

THE 25TH JANUARY 1850.

No. 72 of 1848.

Appeal from the decision of Moulvee Asadoollah, Moonsiff of Radhanagore, dated 24th January 1848.

Khettur Mohun Bannerjea, (Plaintiff,) Appellant,

versus

Kartik Chunder Bannerjea, (Defendant,) Respondent.

SUIT to recover a bond debt of rupees 50, principal, and rupees 7, interest, total rupees 57.

Plaintiff states that defendant borrowed the above sum from him on the 13th Aughun 1252 B. S., giving him a bond for the same, and promising to repay him in Assin 1253 B. S.; not paying, he sues him.

Defendant replies that this case has been brought against him through spite, and is all false; that mouzah Chooreekoond, the lakhiraj property of him and plaintiff's father, was resumed, and revenue due therefrom duly paid by the several sharers; but, in appeal, the tenure was upheld; and as plaintiff's father took away the whole of the money which had been paid by the sharers jointly into the deputy collector's treasury, he (the defendant) sued him in the Oundah moonsiff's court, and obtained a decree against the plaintiff as the heir of his father. He urges that he was at Pooncheh on the 12th and 13th of Aughun 1252 B. S., as he can prove, and he denies ever having borrowed the money or given the bond.

The moonsiff observes that, although plaintiff has produced several witnesses in proof of the bond, still as Gopal Burrun, one of them, says that defendant himself signed it, while Gopal Nundee, another witness, declares that the writer of the bond signed defendant's name for him, he cannot credit their evidence; besides which the writer of the bond is said to be deceased. Gopal Burrun is a witness by profession; and as defendant sued plaintiff's father and then his son once, No. 93, and again, No. 375, it is not likely that defendant would borrow money from plaintiff while there was a feud existing. Further, in the moonsiff's opinion, defendant has established the fact of his having been elsewhere on the day on which the bond is alleged to have been written, and plaintiff was unable to produce any respectable people to prove his case before the ameen he deputed to enquire into it, in order that all doubts might be removed. Consequently, he dismisses it, with costs.

In appeal, plaintiff advances nothing new. He urges that, although two of his witnesses contradicted each other, his proofs were otherwise sufficient; he objects to Gopal Burrun's evidence having been rejected, as he is not a witness by profession, but his evidence has been admitted in another case; he is a brahmin by caste, lived separate from his father, but as he was his heir, defendant of course sued him as alleged; defendant might have been at both places on the same day, and he relies on the ameen's enquiries.

JUDGMENT.

Considering that defendant had brought an action against plaintiff's father, and that a feud existed between them, it is not likely that defendant would have gone and borrowed money from the son, and given him a bond for the same. The contradiction in the evidence of the two witnesses is material, and as the alleged writer of the bond is deceased, suspicion becomes stronger against the bond being a valid document. Further, as defendant has satisfactorily proved that he was not at the place where the bond is stated to have been written, not only by witnesses but also by producing a receipt of the ameen of chowkey Oundah, I cannot place any dependance

on plaintiff's statement or on that of his witnesses, and, seeing no reason for interfering with the decision of the lower court, I hereby confirm it, rejecting the appeal, with costs.

THE 29TH JANUARY 1850.

Appeal No. 74 of 1848.

Appeal from the decision of Baboo Mohun Loll Panday, Moonsiff of Burjorah, dated 28th January 1848.

Mahinder Narain Goshain, (Plaintiff,) Appellant,

versus

Surroop Chunder Bural, (Defendant,) Respondent.

SUIT to recover rupees 175, principal, and rupees 24-4, interest, total rupees 299, due on a kurarnamah, dated 23rd of Kartick 1248 B. S.

Plaintiff states that defendant borrowed the above sum from him, promised to repay him in Chyte 1248 B. S., and pledged an 8 anna share in mouzah Bindrabunpore, his mocururee property, also an 8 anna share in mouzah Bunkanalý: defendant further stipulated not to alienate the above property until he had paid his debt: not paying, plaintiff now sues. Defendant confesses judgment.

Gobind Chund Ghur comes forward to lay claim to the property in mouzah Bindrabunpore, in virtue of a deed of mortgage which was given him by defendant, against whom he obtained a decree on the 16th of January 1848, for rupees 268-14-13, in the moonsiff's court of chowkee Sonamooke. He urges that, as the property was situated within this or the Burjorah chowkee, the decree has been forwarded for execution there, (No 53,) and the property was advertised for sale on the 26th Maugh 1254 B. S.; and he adds that plaintiff's is a false complaint, brought about in collusion with defendant.

The moonsiff argues that, as the defendant has confessed judgment, and plaintiff's vakeel did not wish to file a rejoinder, no enquiry was necessary as to the claimant's objections, and he decreed the amount sued against the defendant, with costs.

In appeal, plaintiff relies on the stipulation which defendant entered into with him by his agreement bond, dated 23rd of Kartick 1248 B. S., that he would not in any way make away with the pledged property until he had paid his debt, and, further, he says, that the moonsiff in his decree should have directed the property defendant had pledged to him (appellant) to be sold in liquidation of his debt, as he advanced the money on the strength of it.

Nothing has been urged by appellant to induce me to interfere with the decision of the lower court, and as it is correct, I hereby confirm it, and reject the appeal, with costs.

THE 30TH JANUARY 1850.

Appeal No. 76 of 1848.

Appeal from the decision of Baboo Bissessur Chuckerbutty, Moonsiff of Bancoorah, dated 29th January 1848.

Shibopershaud Paul Potdar, (Plaintiff,) Appellant,

versus

Madhub Potdar, (Defendant,) Respondent.

SUIT to recover a bond debt of rupees 11, principal, and rupees 2-12-7, interest, total rupees 13-12-7.

Plaintiff states, defendant borrowed the above sum from him on the 17th of Bysack 1252 B. S., giving him a bond on that date, promising to repay him in Assar 1253 B. S., and pledging, until payment, his share in a house in mouzah Sheeromoonceepore: not paying, plaintiff now sues.

Defendant replies that plaintiff's deceased brother and he made plaintiff their mohajun, and opened a cloth-shop, which was current in his, defendant's, name. On squaring accounts on the 17th of Bysack 1252 B. S., a balance of rupees 11 was found to be jointly due by them to plaintiff, and he eventually gave plaintiff a bond as if for a debt through Russick Sircar, for which he holds three witnesses. Defendant urges that plaintiff's brother is dead, and plaintiff is the malik of his property; that he gave him 5 rupees as per receipt on the back of his bond on the 15th of Chyte 1253 B. S., in part of his demand, but plaintiff has made away with the real bond and substituted the one on which he now sues, which is a fabrication.

The moonsiff is of opinion that plaintiff has not proved his bond, and his witnesses contradict themselves so much that it is impossible to believe that the bond which has been filed is the genuine bond which defendant gave to plaintiff. Some say the bond referred to a *cash* transaction, others that it was connected with a *shop* debt; and as the bond is alleged to have been changed, this point is material. Further, the subsequent statement, in a petition given in by plaintiff, that defendant had paid a portion of his shop account, is not supported by his witnesses, and the petition disagrees with the plaint, consequently the moonsiff dismisses plaintiff's case, with costs.

In appeal, plaintiff urges that the counting over of the money to defendant is proved, and he has satisfactorily established the validity of the bond produced by him; and though defendant may have had a money account separate from this, it does not release him from responsibility as far as this transaction is concerned.

The fact of a shop having been opened by defendant and plaintiff's deceased brother is established, and it is clear too that it was a losing concern. Plaintiff's witnesses are at variance, first, as to whether the bond which defendant gave, referred to a cash or to a book account, and secondly, whether on that bond any property was mortgaged. My opinion is, that plaintiff has played false, and, as his

brother, defendant's partner, is deceased, he had an opportunity for so doing. The subsequent petition, which he filed before the moonsiff, also throws much suspicion over his case; and, as I do not consider he has proved it, I confirm the decree of the lower court, rejecting the appeal, with costs.

THE 30TH JANUARY 1850.

No. 81 of 1848.

Appeal from the decision of Moulree Abdool Uzeez, Moonsiff of Oundah, dated 18th November 1847, specially admitted by the Judge on the 2nd of March 1848.

Sheik Dulal, (Plaintiff,) Respondent,

versus

Bhowanee Dey, (Defendant,) Appellant.

SUIT to recover rupees 54-8, principal, *plus* interest, rupees 3-4, total rupees 57-12-0, for non-fulfilment of a contract, and for refund of cash advanced.

Plaintiff states, he carries on a trade in tusser in mouzah Khamarbāria, and that defendant took from him "footee" thread, &c., with advances for making up the tusser, &c.; eventually he squared his accounts, and a balance of rupees 54-8 was found to be due by defendant, on the 5th of Chyete 1252 B. S., and he agreed to it by signing the jumma-khurch accounts; but not paying him, defendant sues for the amount.

Defendant first pleads non-jurisdiction, as he lives within the limits of the South-West Frontier Agency: he denies ever having carried on a trade as alleged with plaintiff, also the settlement of accounts as stated, or that he agreed to the jumma-khurch: he avers that plaintiff is in his (defendant's) debt rupees 50, and that he was at Rajgong on the day on which the contract is stated to have been executed.

The moonsiff considers that plaintiff has proved his case, and, that dealings existed between him and defendant, has been established by an ameen who was deputed for the purpose: he consequently decrees the amount claimed, with costs.

In appeal, objection is taken, among other things, to the moonsiff having admitted the kurarnamah or agreement as evidence, as it is on plain paper. Appellant denies ever having given it, and says, as he can write, he would have prepared it, &c.

In my opinion, the moonsiff should first dispose of defendant's plea of non-jurisdiction, and ascertain when, where, and how the debt was incurred; for until these points are settled, it is not clear that plaintiff's case can proceed. Secondly, the jumma-khurch account being in the light of an agreement, should not have been received by the court on plain paper, but returned to the party presenting it to be stamped, and the usual fine should have been imposed. Thirdly, defendant should have been called upon for his proofs, and the local

enquiry should not have been conducted in defendant's absence. Under the foregoing circumstances, I consider the decision of the moonsiff to be bad, and I hereby return the case to him for trial *de novo*. The appeal is decreed, and the value of stamp paper must be refunded to appellant.

THE 30TH JANUARY 1850.

No. 87 of 1848.

Appeal from the decision of Moulvee Abdool Uzeez, Moonsiff of Oundah, dated 5th February 1848.

Radhabullub and others, heirs of Mohun Chunder Ghosal and others,
Plaintiffs,

versus

Juggernath Dey and others, Defendants.

Hurreepershaud Banerjee, (one of the Plaintiffs,) Appellant.

SUIT to obtain possession of 7 beegahs of khirajee burmuttur land in mouzah Shabanpoor, with wasilaut, laid at rupees 63.

Plaintiffs state that the land at issue was formerly in the jote of one Gour Dey. In 1230 B. S., a portion of it was covered with sand and remained waste, whereupon Gour's brother, Nubeen, took the whole of the land into cultivation, and Mohun and Lukhun cultivated a portion of it in 1242 B. S., paying their share of the revenue to the maliks. The maliks then gave a joint pottah to Hurreepershaud (one of the plaintiffs) for the land at a jumma of rupees 2-4, receiving rupees 2 as consideration money in 1243 B. S. Hurreepershaud has been unable to obtain possession, and he, as the ryot, and three others, as the maliks, sue jointly for possession, &c., calculating their respective rights and demanding wasilaut from 1243 to 1253 B. S., on the cultivated portion, or beegahs 2-10, &c.

Kannye and Gour, two of the defendants, reply that their accounts were settled and the balance came to rupees 36, of which they promised to pay rupees 13 in Falgoon 1254 B. S., and rupees 23 during 1255 B. S.; they urge that they have paid rupees 11 to the maliks, and if they do not give credit for it they must make it good: they agreed to pay their malgoozaree at the rate of rupees 3-4 annually on beegahs 2-10, in part of the 7 beegahs to Hurreepershaud, (one of the plaintiffs,) and they have no concern with the 5 beegahs of sand.

After this it came to light that although, as alleged, Hurreepershaud Banerjee, one of the plaintiffs, had been instrumental in effecting the above settlement of the accounts between plaintiffs and defendants out of court, he declined having agreed to it, or that he was a party to it in court, and plaintiffs' vakeel having been asked by the moonsiff whether he abided by defendants' statement, he replied he could not do so without consulting his clients.

In the face of this refusal, the lower court accepts the agreement; and although there are four plaintiffs, and only two out of the several defendants have appeared, the court decrees the case as stated by the defendants.

In appeal, of course objection is taken to the alleged agreement, and as there is not a particle of proof to establish it, it cannot stand. I decree the appeal therefore, and remand the case for trial *de novo*. Value of stamp paper to be refunded.

THE 30TH JANUARY 1850.

No. 94 of 1848.

Appeal from the decision of Moulvee Asadoollah, Moonsiff of Radhanagore, dated 17th February 1848.

Beclasee Bewah and others, heirs of Bowree Paul, deceased,
Plaintiffs,

versus

Gooroochurn Paul and several others, Defendants.

Gooroochurn Paul and Kishen Paul, Appellants.

SUIT to recover the value of rice, laid at rupees 27.

Plaintiffs say that they were in possession of 15 beegahs of land, belonging to Bowree Paul in mouzah Bhagaarah, appertaining to lot Hurrynuggur, at the jumma fixed by a fysalah of rupees 8-11 per annum. In 1253 B. S., they cut 12 beegahs of the rice, and about 3 beegahs remained on the ground, which the defendants cut and plundered on the 7th of Pous 1253. They consequently sue for the value of the rice and straw.

Kishen Paul and Gooroo Paul, two of the defendants, reply by denying the cutting and plundering: they argue that lot Hurrynuggur is the putnee of Nerain Mundul, deceased, and not of Gopal Mundul, as stated, and as the heirs of the former are alive, they should have been made parties to the suit, and not Gopal.

Pershaud Paul and several others, defendants, reply in support of the other defendants.

The boundaries of the land were subsequently entered in the jowaub-ool-jowaub; and although defendants produce witnesses to establish that it belonged to mouzah Gopce Bullubpoor, yet, in the moonsiff's opinion, he cannot credit their evidence, as they are low caste men. He refers to a fysalah No. 21, and to the evidence of plaintiff's witnesses; and as it appears that the contested land was in their possession, and that Gooroochurn Paul and Kishen Paul dispossessed them and plundered the crops, he decrees the case against them, with costs.

In appeal, it is urged that the evidence of defendants' witnesses is as good as that of the plaintiffs, that a local enquiry should have been made, and that plaintiffs' case is altogether false.

In a case of this nature where the point of possession is so extremely doubtful, and where the witnesses on both sides speak in favour of their respective friends, a local enquiry was of all things necessary. Plaintiffs claim the land as belonging to mouzah Bhagaa-rah; defendants say it pertains to Gopee Bullubpore; and I should be sorry to decide upon it, simply on the evidence which is to be found with the nuthee. I consider, therefore, the case is incomplete. I decree the appeal, and remand the case to the lower court to be re-tried, after an amcen, or some other trustworthy person, has been deputed and instituted enquiries into the matter in dispute on the spot. Value of stamp paper to be refunded in the usual way.

ZILLAH CUTTACK.

PRESENT: M. S. GILMORE, ESQ., JUDGE.

THE 15TH JANUARY 1850.

No. 15 of 1849.

Appeal from the decision of Tarakanth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated 29th December 1848,

Hurry Naik, (Plaintiff,) Appellant,

versus

Rajnarain Rai Chowdree, Kassenath Das Chowdree, Rugoonath Chowdree, and Musst. Koonilla Dey, widow of Somnath Chowdree, deceased, (Defendants,) Respondents.

CLAIM, right of possession on mouzah Neelconna, talook Bulbudderpore, as moquddums, with wasilat from the date of dispossession, and the cancelment of the order of the revenue commissioner annexing the mouzah to the *hustobood*, or ryuttee portion of the estate. Suit laid at rupees 586-4-3-12. Instituted 19th March 1847.

The plaintiff stated that mouzah Neelconna is his hereditary *moquddummee*, and was acquired by his ancestors, Purnee Naik and Rugoo Naik, during the Mahrattah dynasty from the former zumeendars, the ancestors of the defendants, Chowdrees Kasseenath, Rugoonath, and Somnath; that on the death of Purnee Naik and Rugoo Naik, they were succeeded by their sons, Nissut Naik and Ghun Naik, who were in like manner succeeded by Nelai Naik, the son of the former, and Puddee Naik and Kalee Naik, the sons of the latter; but Kalee Naik relinquished his interest in the moquddummee, which remained in the possession of Nelai Naik and Puddee Naik, the father of the plaintiff, Hurry Naik, until 1207 U., when Nelai Naik relinquished his interest in the mouzah in favor of the said Puddee Naik, on whose death the plaintiff, Hurry Naik and his brother Radhoo, who subsequently resigned his share in the management, succeeded to the moquddummee and continued in possession until the settlement of talook Bulbudderpore in 1251, when the defendant Rajnarain Chowdree, who had purchased one-half of the estate Bulbudderpore, and held a mortgage on the other half from the zumeendars, the other defendants, claimed mouzah Neelconna as part of the *hustobood* portion of the property, and advanced in support of his claim, that the plaintiff had executed farming kubooleuts, and the

mouzah was recorded in the jumwabundee accounts of 1211 U., furnished by the amil of the Mahrattah rulers, as the ijarah of Bhugut Mhaintee; and the deputy collector engaged in the settlement of the estate dismissed his claim as moquddum, though he had established by documentary and oral evidence, that his ancestors had acquired a moquddummee title in the village, and had granted as *bilmooter*, and sold portions of the mouzah to other parties during the Mahrattah Government; and that they and he after them, had continued in possession till the present time. He then appealed to the collector, who reversed the decision of the deputy collector and upheld his moquddummee, and submitted the settlement papers for the confirmation of the commissioner, who in consequence of instructions received from the Sudder Board of Revenue, confirmed the decision of the deputy collector, on the grounds that the plaintiff's claim could not be summarily enquired into. The plaintiff further stated that the commissioner had confirmed other moquddummee claims, notwithstanding the moquddums had executed farming kubooleuts, and Mr. Collector Pakenham, in his rooboocarry of the 3rd of November 1823, had recorded his opinion that the rights of the moquddums could not be prejudiced in consequence of the zumeendars having caused them to execute farming kubooleuts; nevertheless, Rajnarain Chowdree, in collusion with Kasseenath Chowdree, the zumeendars, had dispossessed him on the strength of the commissioner's order, since the month of Cheit 1251 U.

The defendants, Rajnarain Rai and Kasseenath Das, denied the right of the plaintiff to possession of the mouzah as moquddum, and asserted that he was only a farmer, founding their assertions simply on the facts of the mouzah having been recorded in the jumwabundee accounts of 1211 U., as the ijarah of Bhugut Mhaintee, and the moostajiree kubooleuts said to have been executed by the plaintiff in favor of the zumeendar from 1238 to 1240 U., and those executed by him from 1243 to 1249, when the estate was managed khas by Government; and that he had likewise signed an ikrarnamah on the 2nd of May 1827, on account of an arrear of rent to the amount of rupees 13-2-0 as moostajir.

The principal sudder ameen dismissed the plaintiff's claim on the grounds pleaded by the defendants, and because more than twelve years had elapsed from the date of the ikrarnamah of the 2nd of May 1827, to the institution of the suit; and against this decision, plaintiff has appealed, asserting that his claim had been fully established.

JUDGMENT.

After an attentive consideration of all the circumstances of the case, and especially of the following documents, viz., the two *kubalahs*, or deeds of sale of lands situated in mouzah Neelconna, conjointly executed by Chowdree Dadhee Babun Das, zumeendar, and Nissut Naik, moquddum, cousin-german to the plaintiff, under dates 24th Shahr Mohurram and 20th Shahr Shawal 1158 U., which bear the seal of

the pergunnah cazee; the *sunnud*, or document, dated the 25th Shahr Shawal 1159 U., according to which the said Nissut Naik *moquddum* of Neelconna granted 12 goonths 8 biswas of land in the said mouzah, to one Gopal Punda, as *lukhiraj birmootur*, which grant has been upheld as valid, by the officers employed on the part of Government to examine the titles to land held free from the payment of rent; the *moquddumee sunnud* executed by Chowdree Hurry Bundoo Das under date the 15th Shraban 1185 U. according to which Puddee Naik, the grandson of Rugoo Naik, and father of the plaintiff, was restored to the possession of the kismut of the village held by the said Rugoo Naik; the purwannah of 25th Shahr Zeekad 1208 U. issued by the Mahrattah hakims to Bulwant Rai foudar, directing him not to demand or levy any increase of *russoom* from certain moquddumee villages therein enumerated, (the crops of which had suffered injury) among which is mouzah Neelconna; and a similar perwanah dated the 1st Suffr 1202 U. referred to in the officiating collector's roohoocarry of the 2nd January 1844, whereby he upheld the plaintiff's *moquddumee* title; and lastly, the *takeenamah* of the 5th Mes or Boisack 1227 U., issued in the name of Rada Madub Banoorjea to the ryuts of mouzah Neelconna, directing them to take pottahs, &c., annually, according to custom from the plaintiff Nur Hurry Naik, *moquddum*, there does not exist the slightest doubt in my mind that, for the last 100 years and upwards, mouzah Neelconna has been held as a *moquddumee* tenure, and the simple fact of the tenure having been recorded in Gopal Pundit's papers, or the jumna bundee accounts of 1211 U., furnished by the Mahrattah amils, as the *ijara* of Bugut Mhaintee, cannot, in the face of the documents above enumerated, be admitted as proof that the mouzah was not a *moquddumee* tenure; for it has been explained by Sonnath Rai, the pergunnah canoongoe, who held office during the Mahrattah Government, and Bustum Churn Das, both of whom gave evidence before the settlement officer, that the mouzah which was the moquddumee of the plaintiff, was let in farm in 1211 and 1212 U., (as was usual in similar cases,) because it had suffered from drought, and the plaintiff's father was unable to pay the rent; but that he retained his *khanah barree* land free from rent; and the latter of the two witnesses further deposed that from 1213 up to the time of settlement the plaintiff was in possession; and the fact of the plaintiff's being in possession as *moquddum*, is likewise manifest from the evidence of the witnesses examined on his behalf before the principal sudder ameen. And with regard to the defence set up by the defendants that the plaintiff executed *moostajiree kubooleuts* from 1238 to 1240 U., in favor of the zumeendar, and surbarakarry kubooleuts from 1243 to 1249 U., during the time the property was managed *khas* by Government, the execution of such *kubooleuts* even, if they were all genuine, (and I entertain doubts regarding the former ones, for they have all three apparently been written at the same time, the

handwriting, as well as the color of the ink, making allowance for the freshness, or oldness of the paper, on which they are engrossed, being the same,) cannot be considered as a relinquishment on the part of the plaintiff of his moquddumnee claim, or the title under which his ancestors and himself after them have held possession of the village for the long period of one hundred years. And it is recorded in the collector's rooboocarry of the 2nd January 1830, relating to mouzah Aibah, which was held khas, at the same time as mouzah Neelconna, that the circumstance of the parties in possession having executed farming kubooleuts during that period would not prejudice their claims as moquddums, which would be enquired into when the property came under settlement. If it had been satisfactorily shewn by the defendants, that the line of succession had been interrupted, or that the mouzah had ever entirely lapsed from the hands of the plaintiff's family, and that on recovering possession, they executed farming kubooleuts, the case would be different; but such is not the case: and although the defendants' vakeel has raised objections to the plaintiff's title, on the grounds that, in the purwannah of 1208 U., mouzah Neelconna is represented as the moquddumnee of Neelai Naik, and the *istifa*, according to which, the plaintiff states, the said Neelai Naik relinquished his share in mouzah Neelconna in favor of Puddee Naik, is dated the 11th Rujub 1207 U.; that circumstance cannot hurt the plaintiff's claim, because Puddee Naik was previously a joint partner in the moquddumnee, and Neelai Naik may have relinquished his share, without giving information of his having done so to the Mahrattah hakims who issued the perwannah. I therefore consider that it has been satisfactorily proved that the plaintiff and his ancestors have been in undisturbed possession (with the exception of the two years during which Bhugut Mhaintee farmed the mouzah) from a period long antecedent to the present government, and such possession, coupled with the proof that has been adduced of the nature of the tenure, under which they originally held the mouzah, in my opinion, amply refutes the defendants' assertion that the plaintiff was only a farmer or tenant at will; and it would be highly unjust all at once to reduce him to a level with the common ryut, who possesses no proprietary title whatever in the soil; because to avoid the opposition and illwill of his superior, the zumeendar, or to escape a worse fate, he executed (or is said to have executed) engagements, which were from time to time renewed for specific periods, at nominally different jummas, (I say nominally, because the difference was so trifling as to be of little or no consequence to the person who had to pay it,) especially as it is notorious that the Bengal zumeendars, after purchasing estates in Orissa, caused the moquddums to execute kubooleuts as *moostajirs* and *ijarahdars*, with the view to deprive them of their rights, and it has been recorded by high revenue authority that the execution of such kubooleuts should not be held to vitiate any genuine moquddumnee title.

On the above grounds I decree the appeal, and reverse the decision of the principal sudder ameen, dismissing the plaintiff's moquddumee claim, and instructions will be issued to the revenue authorities to record the name of the plaintiff as moquddum of mouzah Neelconna; but as malikana is only allowed to the moquddums to cover the risks and expenses attending the collection of the rents from the ryuts, I do not consider the plaintiff entitled to wasilat on account of the period he has been out of possession. The plaintiff's costs in both courts, after deducting the amount incurred on account of the claim made for wasilat, will be paid by the respondents, with interest to the date of payment; and the Government stamp duty will be realized through its vakeel, who will be furnished with copy of this decree.

THE 23RD JANUARY 1850.

No. 85 of 1849.

Appeal from the decision of Mohesh Chunder Rai, Moonsiff of Dhamnugur, dated the 11th August 1849.

Gopceenath Dukhin Rah, (Defendant,) Appellant,

versus

Anund Bullub Mahasoy, (Plaintiff,) Respondent.

CLAIM, rupees 289, 4 annas, 8 pie, 8 krants, rent of mouzah Koorkoora, on account of the 8 annas kist of 1256 U., viz., rupees 279-1, principal, and rupees 10-3-8-8, interest; and interest thereon to the date of payment, suit instituted 22nd May 1849.

The defendant acknowledged the claim for the principal, with the exception of 8 annas and 6 pie, which he disputed on the grounds of a small parcel of land having been confirmed as lakhiraj, and maintained that he was neither liable to the payment of interest or costs, as the plaintiff had never demanded the rent; and in conformity with the orders passed on a petition presented by him to the deputy collector of Bhuddruck on the 2nd May, his son and *kar-purdaz*, accompanied by the pergunnah canoongoe, went to the plaintiff's tehseeldar on the 19th of that month, and tendered payment of the sum of rupees 278-8-6, but he refused to take it, unless he, the defendant, paid the full demand together with the costs incurred on account of the suit, which he alleged he had instituted in the moonsiff's court, though at that time no suit had been instituted. He also stated that he did not, by himself, tender payment of the rent to the plaintiff, because, after collecting the rent of 1255, and granting him receipts for the money, he instituted a summary suit against him, and having denied his receipts made him pay twice over.

The moonsiff held that it was proved that the plaintiff had demanded payment, and that, whether he had done so or not, the de-

defendant should have tendered the money; and as he had adduced no proof that the sum of rupees 1-1 should be deducted on account of lakhiraj land, he ought to have paid that likewise; and as the money was not tendered to the tehseeldar till the 19th of May, and the vakalutnamah granted by the plaintiff to his vakeel was dated the 17th idem, it was clear that the tehseeldar did not receive the money, because he supposed the suit had been instituted; and he accordingly decreed the claim with costs, *minus* the interest accruing between the 19th of May and the date of his decree on the sum tendered to the tehseeldar. Against the above decision the defendant appealed, repeating his objections made before the lower court.

JUDGMENT.

Since the appellant did not pay his rent when it became due, the respondent was fully entitled to interest thereon; and it was optional with him to receive such part of the sum due, as the appellant tendered to him, or to sue in court for the recovery of the whole. Moreover, it appears that the appellant objected to pay rupee 0-8-6, on account of some lakhiraj land, and that the respondent had executed a vakalutnamah for the purpose of instituting the suit on the 17th May, or two days before appellant tendered payment of the sum of rupees 278-8-6; I therefore dismiss the appeal, and affirm the decision of the lower court, without serving notice on the respondent.

THE 23RD JANUARY 1850.

No. 86 of 1849.

*Appeal from the decision of Mqhomel Arshud, Moonsiff of Kendraparrah,
dated the 31st August 1849.*

Bhugwut Mhaintee, (Defendant,) Appellant,

versus

Jugmohun Das, (Plaintiff,) Respondent.

CLAIM, rupees 15-11-2-8, principal and interest of a tumusook, dated 7th Cheit 1251 U., with costs and interest to the date of payment.

The plaintiff stated that, on the 7th Cheit 1251, the defendant borrowed from him the sum of rupees 10, and executed the bond on the security of Birnhanund Mhaintee, the conditions of the bond being that the sum was to be repaid in four months, and that all payments made were to be recorded on the back of the document, and no separate receipts granted; but four years and nine months had since elapsed, and the defendant had paid nothing.

The defendant admitted that he executed a bond for the sum, and on the date named in the plaint, but stated that the bond was written on a 2 annas' stamp, whereas the one filed by the plaintiff was on a

4 annas' stamp; he likewise stated that he had liquidated the amount of the said bond, as well as that of another bond, on the 7th Cheit 1254, and obtained from the plaintiff one receipt for both bonds, in which it was recorded that the receipt had been granted in consequence of the bonds having been lost.

The plaintiff denied having granted the receipt, and stated that the tumusook filed by him was the genuine one, and that he had in his possession the second bond alluded to by the defendant.

The moonsiff held that it was proved by the evidence of the witnesses, that the defendant executed the bond on the 4 annas' stamp, on the security of Birmhanund Mhaintee who had failed to defend the suit, and that the signature on the *farikhut* or receipt did not correspond with the plaintiff's signature on the other papers filed in the case, and he accordingly decreed the plaintiff's claim, with costs.

Against the above decision the defendant appealed, repeating the objections preferred before the lower court.

JUDGMENT.

If, as stated by the appellant, he paid the plaintiff the amount of the bond in money and kind on two different occasions, he should have held two separate receipts for the two payments, and not have filed one receipt for two distinct loans; and the genuineness of the bond has been duly established by the attesting witnesses. And although the appellant's witnesses also deposed that the *farikhut* or receipt filed by him was granted by the plaintiff, the signature thereon does not appear to be genuine, but appears to have been written by a person unacquainted with the Persian character. I therefore see no reason to interfere with the moonsiff's decision, which is hereby affirmed, and the appeal dismissed, without serving notice on the respondent.

THE 25TH JANUARY 1850.

No. 4 of 1849.

Appeal from the decision of Moonshee Gureeboolla, Sudder Ameen of Balasore, dated the 16th June 1849.

Chaitan Pershad Dutt, Nitranund Dutt, and Adit Pershad Dutt,
(Defendants,) Appellants,

versus

Sheik Abdool Rof, (Plaintiff,) Respondent.

CLAIM, rupees 340, part amount of an ikrarnamah, or instalment bond, dated the 10th Phalgun 1248, and rupees 287-13-11, interest

thereon, for seven years and twenty days, with interest to date of payment.

The plaintiff stated that, with the view to the adjustment of certain cases pending before the civil court and the revenue authorities, between himself and Nitranund Dutt and Ameenooden Allee, the uncle of the plaintiff, the two latter executed the ikrarnamah under which he sued, acknowledging themselves responsible to the plaintiff for the sum of rupees 2,900, of which rupees 290 was to be paid annually in three instalments, viz., one-fourth, or rupees 72-8, by Chaitan Pershad Dutt, and three-fourths, or rupees 217-8, by Ameenooden Allee: and on every instalment not paid in order, interest was to be calculated from the date of the ikrarnamah, &c. The defendants, Nityanund Dutt and Adit Pershad Dutt, as well as Chaitan Pershad Dutt, are the sons of Gooroo Pershad, deceased, who, together with the said Nityanund, countersigned the ikrarnamah.

The whole of the defendants denied executing or making themselves parties to the ikrarnamah, and urged that, as the plaintiff had only sued for part of the money claimed by him on the document, he should have been nonsuited; but the sudder ameen, considering the execution of the ikrarnamah by Nityanund, and the attestation of it by his father and brother fully proved, decreed the claim, with interest and costs, against all three defendants; and against his decision they have preferred the present appeal.

JUDGMENT.

Since the appellants dispute the genuineness of the ikrarnamah, and object that the plaintiff (respondent) should have valued the suit on the aggregate of the instalments sued for with interest, and those which would subsequently fall due; and his objections, according to the orders issued in the 6th paragraph of the Sudder Dewanny Adawlut's letter of the 16th July 1819, re-circulated with their letter No. 61 of the 31st August 1832, are valid, for the aggregate of the two amounts is rupees 867-13-11, and the bill of plaint is engrossed only on a thirty-two, in place of a fifty rupees' stamp. Without entering on an investigation of the merits of the claim, it is hereby ordered, that the decision of the lower court be reversed, and that the case be returned to the sudder ameen, with orders to restore to its former place on his file, and, according to the above circular, nonsuit the plaintiff. The value of the appeal stamp will be refunded as usual, and on the decision of the case the costs will be made payable by the party cast.

THE 26TH JANUARY 1850.

No. 16 of 1849.

Appeal from the decision of Tarakanth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated the 17th April 1849.

Chowdry Damoodur Das and Chowdry Kirtibas Das, on account of themselves and as guardians of Das Ruttty Das and Hurry Kishen Das, the minor sons of Lokenath Das, deceased, (Plaintiffs,) Appellants,

versus

Das Naik, Kishen Moonee, Rajna Dhurnee and Gujna Mehters, (Defendants,) Respondents.

CLAIM, rupees 463-15-2 $\frac{3}{4}$, balance of a kut-kubalah, bearing date the 20th Asin 1252 U., with interest thereon.

The plaintiffs stated that the whole of the defendants conjointly borrowed from their father, Chowdry Lokenath Das, the sum of rupees 670, and executed the kut-kubalah, mortgaging to him mouzah Naiagaon, pergunnah Sailo; the conditions of the said kubalah, which was duly registered, being that, if the money was not repaid in four months, the sale of the property was to become absolute. They further stated that on the 6th Poos 1252, or about two months after the kubalah was executed, the defendants, with the exception of Das Naik, sold their shares in the mouzah to one Bhowree Mullick and repaid rupees 343-8; and as the mouzah had been subsequently sold for arrears of revenue, and they could not in consequence sue for the foreclosure of the mortgage, they prayed that the balance due to them, with interest, might be paid from the surplus proceeds of the share of Das Naik, which were in deposit in the collectorate.

The defendant Das Naik denied both borrowing the money and executing the kubalah, and stated that, if he had been present at the time the document was registered, the register would have included his name in his certificate of those present.

The plaintiffs replied that the omission of the name of Das Naik from the register's certificate was merely an oversight.

The principal sudder ameen held that the register's certificate was a more authentic and trustworthy document than the evidence of the witnesses, and as Das Naik denied having been present when the kut-kubalah was registered, and his name was not included with that of the other defendants in the register's certificate, the evidence of the three witnesses, who had deposed that he was present, could not be relied on, especially as Urjun Sing Chuprassy, who was in attendance on the register, had deposed that Das Naik was not present; and though it was possible that the name of Das Naik might have been omitted from the certificate through oversight, if such an excuse were admitted, it would afford a bad precedent for the future; he therefore decreed the plaintiff's claim, with costs against

the other defendants, who did not enter appearance, and released Das Naik.

Against the above decision the plaintiffs appealed, stating that the execution of the kubalah on the part of Das Naik and the other defendants had been fully established by the evidence of the witnesses, and that the omission of the name of Das Naik from the register's certificate originated in an oversight.

JUDGMENT.

In addition to the omission of the name of Das Naik from the register's certificate, endorsed on the *kut-kubalah*, it appears that the sum of rupees 343-8, alleged to have been realized on the 6th Poos 1252 U., is recorded on the back of the document to have been paid by Kooshen, Rajna, Gujna, Moonee, and Dhurnee Mehters, notwithstanding the money is stated in the deed of mortgage to have been conjointly borrowed by them and Das Naik; and although the plaintiffs sued the whole of the parties to the deed, they prayed that the claim might be satisfied from the surplus proceeds of the sale of Das Naik's share alone in mouzah Naiagaon. I therefore am of opinion that, according to the statement of Das Naik, the plaintiffs, in collusion with the other defendants, fabricated the *kut-kubalah*, with the view to get possession of Das Naik's share in mouzah Naiagaon, which is situated in the plaintiff's zumindary; for it is not probable that, if the five abovenamed defendants borrowed the sum of rupees 670 conjointly with Das Naik, and thereby rendered themselves liable for the whole amount, they would, independent of Das Naik, sell their share in the property to liquidate a portion only of the debt; neither is it likely that, if the plaintiffs really held a mortgage on the entire property, they would have received a portion of the money due to them from a part of the defendants, and have released their half of the property, when they, with Das Naik, were responsible for the whole of it; and when the principal sudder ameen held the said five defendants responsible for the plaintiffs' claim, notwithstanding the plaintiffs admitted that they had liquidated in full the sum due from them, they would have appealed against his decision; but this they have not done, and it is to be inferred therefrom that Das Naik was not present at the time the kubalah was registered, and that it was designedly concealed from the register that he had been made a party to the kubalah, otherwise the document would not have been registered in his absence. I therefore dismiss the appeal, and confirm the decision of the principal sudder ameen, releasing Das Naik from the plaintiffs' claim against the other part of the principal sudder ameen's decision, decreeing the amount sued for, with costs, against the other defendants. No appeal has been preferred, and consequently it is not within the province of this court to interfere with it.

The respondents' costs in both courts will be defrayed by the appellants, with interest to the date of payment.

THE 30TH JANUARY 1850.

No. 17 of 1849.

Appeal from the decision of Tarakanth Bidya Sagur, Principal Sudder Ameen of Cuttack, dated the 24th April 1849.

Maharajah Ram Chunder Deo, (Defendant,) Appellant,

versus

Musst. Mynah Dey, (Plaintiff,) Respondent.

CLAIM, balance of subsistence allowance of her late husband, and the personal effects of Musst. Bimla Dey, her mother-in-law. Suit laid at rupees 950-6-4-2.

The plaint sets forth that, in conformity with the orders of the Sudder Board of Revenue, the plaintiff's husband, Nelumbur Rai, received from the defendant, and his father before him, the sum of Sicca rupees 100 monthly, for the maintenance of himself and family, and that in 1234, when Bimla Dey, the mother, and Gora Jumna Dey, the sister of Nelumbur Rai, separated from their son and brother, the collector allotted rupees 30 out of the said rupees 100, for their maintenance, viz., rupees 20 for that of the former, and rupees 10 for that of the latter, and the remaining rupees 70 for her husband, and issued a perwannah to the rajah to pay them respectively the said sums monthly; and when, after the death of Nelumbur Rai, the rajah refused to pay the plaintiff the sum allotted to her husband, she sued in the civil court, and on the 10th of August 1830, obtained a decree for the amount, viz. rupees 70, which was to be continued to her for life; but under power conceded by the decree, the revenue authorities allotted rupees 30 out of the sum decreed to the mother-in-law and sister-in-law of the plaintiff, making their joint allowances rupees 60, and that of the plaintiff rupees 40; and on the death of Musst. Gora Jumna Dey in August 1844, the collector divided her allowance between the plaintiff and her mother-in-law, and thereby increased that of the former to rupees 57-2-5, and that of the latter to rupees 42-13-3, and after the death of Musst. Bimla Dey, her mother-in-law, in 1252 U., the plaintiff petitioned the court to get her allowance, and the principal sudder ameen ordered the payment of the sum of rupees 70, decreed under date the 10th of August 1830, and dismissed the defendants' objections to the effect that his mother made over her allowance and effects to him by will. And she now sued for the sum of Sicca rupees 30, or Company's rupees 32, the balance of the allowance originally granted to Nelumbur Rai, from the date of Bimla Dey's death, and the personal effects of the said Bimla Dey, representing herself to be her heir.

The defendant admitted that, in conformity with the collector's orders, he had paid the sum of Sicca rupees 100 to the plaintiff and her mother-in-law and sister-in-law, in the proportions stated in the plaint, until the death of Musst. Bimla Dey, on the 23rd Asar 1252, when he stopped payment of the allowance of Bimla Dey, in consequence of

her having made it over to him by will, together with the rest of her effects, and on the plaintiff's petitioning the collector for the same, she was instructed to file a *decreejaree durkhast* in the civil court; and on her doing so, the judge issued an order for the payment of the sum of rupees 70, previously decreed; and when he was about to institute a regular suit to set aside the said summary decision, the plaintiff anticipated him by preferring the present suit. He further stated that the purport of the pundit's *bywastah* filed with the *decreejaree* case, was that persons who received pensions from Government could not alienate or transfer them; but that on the demise of the pensioner they reverted to the estate; and therefore in like manner the allowances granted to Musst. Gora Jumna Dey and Bimla Dey reverted to him; and the plaintiff had no right to them. He likewise denied that Bimla Dey was possessed of all the property claimed by the plaintiff, and stated that, whether she was or not, she had willed all she possessed to him, as had been proved in the *decreejaree* case.

The principal sudder ameen, after calling for a *bywastah* from the pundit, as to the respective rights of the plaintiff and the defendant to inherit the property of Bimla Dey, and the power of the said Bimla Dey to will away her property to the defendant, both of which points were answered in favor of the defendant, held that, although the plaintiff was not heir to her mother-in-law's property, she was entitled to her pension or allowance, as being part of the sum originally allotted to her husband, and, in amendment of her claim, decreed the said allowance, viz., Company's rupees 32, with arrears and interest and a proportionate amount of costs. Against the above decision the defendant appealed, reiterating the objections preferred by him before the lower court.

JUDGMENT.

As the sum of Sicca rupees 100 was allotted to Nelumbur Rai for the support of himself and the other members of her family, viz. his mother and sister, and on his separating from them in 1234 U. the collector out of the said sum of rupees 100, allotted rupees 70 to Nelumbur Rai, rupees 20 to her mother and rupees 10 to his sister, which said sums were respectively paid by the rajah: and when, after the death of the plaintiff's husband, the rajah discontinued his allowance, the plaintiff sued and obtained a decree on the 10th August 1830, for the sum of rupees 70, drawn by her husband, to be continued to her for life, and no appeal has ever been preferred against the said decree, the plaintiff is in every respect entitled to receive the full amount decreed, but no more; for Nelumbur Rai never raised any objection to the deduction of rupees 30 from his allowance, for the support of his mother and sister, after their separation from him, and it is manifest that, if the family had separated before the sum of rupees 100 was granted to Nelumbur Rai, specific sums would have been allotted to each individual member, and on the death of any one of them, the allowance of the deceased would have

ceased and reverted to the rajah. Moreover, between the date of the said decree and the institution of the present suit, 17 years have elapsed. It is therefore ordered, that the appeal be decreed, and the decision of the principal sudder ameen, awarding to the respondent rupees 32, the allowance enjoyed by Bimla Dey, be reversed. The costs of both parties in both courts will be paid by the respondent, with interest to the date of payment.

THE 30TH JANUARY 1850.

No. 88 of 1849.

Appeal from the decision of Sheeb Pershad Sing, Moonsiff of Cuttack, dated the 24th August 1849.

Sirneebas Ootah, (Plaintiff,) Appellant,

versus

Ramchunder Nund and others, (Defendants,) Respondents.

CLAIM, possession of 1 biswa, 3 kancees of land, with the right to re-open two drains thereon. Suit laid at rupees 3-13.

The plaintiff sets forth that, in the year 1205 U., the plaintiff's ancestors acquired 4 goonths, 8 biswas of lakhiraj land in mouzah Barnul, and built thereon a house, out of which issued three drains, two on the north and one on the south side, and that the magistrate, on a complaint being preferred by the defendants, ordered the two former to be closed, which was tantamount to dispossessing him of the land, and he therefore instituted the present suit.

The defendants replied that their land extended to the north wall of the plaintiff's house, and denied that there was any drain on the north side of his house until 1254, when, on the plaintiff's opening two drains, they petitioned the magistrate, who ordered them to be closed; and when, after closing them, the plaintiff instituted a suit before the magistrate, praying to be allowed to re-open them, they disproved his right to do so, and his case was dismissed; and as he had included the expenses incurred on account of that case in his present claim, the suit should be dismissed.

The moonsiff, after proceeding to the spot, and measuring the breadth of the plaintiff's house from the south to the north wall, and finding that towards the east end it measured 2 haths, 14 unglees, and towards the west 10 unglees less than 1 cahun, 3 puns, the registered measurement of the plaintiff's khanabaree land, assumed as the boundary between the plaintiff's and defendants' lands to run in a straight line east to west from a wall, which, during the investigation of a suit No. 14568, instituted by the plaintiff and another person in the court of the sudder ameen in 1842, was ascertained to be the boundary between them on the east side; and decreed that the plaintiff was to re-open the drain, but that it was not to extend more than 12 unglees, or fingers, beyond the wall of his house.

With the above decision both parties being dissatisfied, both appealed; the plaintiff, on the grounds that the moonsiff had decreed

only a portion of the land claimed, viz. twelve fingers in breadth, notwithstanding his house, according to the moonsiff's own measurement, occupied 2 haths, 14 unglees of land, less than the quantity which he was entitled to, according to the *bhowrea*, or measurement records, and the defendants object to the opening of the drains at all, stating that their land extends to the wall of the plaintiff's house.

JUDGMENT.

As the plaintiff, in consequence of the magistrate's order, directing both drains on the north side of his house to be closed, sued for the possession of 1 biswa, 3 kanees of land, which was occupied by the said drains, and the defendants claimed the lands, asserting that the boundary of their *dewuttur* land extended to the foot of the wall of the plaintiff's house, and the witnesses of both parties gave evidence in support of their respective claims, it was necessary to ascertain on whose lands the drains were really situated, and this could only be properly done by re-measuring and comparing the lands of both parties with the zumeendarry measurement papers; but the moonsiff, instead of doing this only, measured the breadth of the plaintiff's house at both ends, and after assuming a boundary line, merely decreed a strip of land, twelve fingers in breadth, along side of his house for the drain in favor of the plaintiff, though he records that, according to his own measurement, the ground occupied by the east end of the plaintiff's house is 2 haths, 14 unglees, less than the quantity registered in the *bhowrea* papers. It is therefore ordered, that the decision of the moonsiff be reversed, and that the case be returned to him with instructions to restore it to its former place on his file, and to ascertain to whom the 1 biswa, 3 kanees of land claimed by the plaintiff belongs, and to decide accordingly; taking care that, in whatever way the case may be decided, the water from the drains does not flow into the defendant's land. The value of the stamp of appeal will be refunded, and the question of costs will be adjusted, when the case is finally decided.

THE 30TH JANUARY 1850.

No. 89 of 1849.

Appeal from the decision of Sheeb Pershad Sing, Moonsiff of Cuttack, dated the 24th August 1842.

• Ramchunder Nund and others, (Defendants,) Appellants,

versus

Sirneebas Ootah, (Plaintiff,) Respondent.

THE appellant in this case laid claim to the land on which the drains, the cause of action in appeal case No. 88, just decided, are situated, and as the moonsiff's decision has been reversed, and the case returned for further investigation, touching the rights of the different parties to the land, no further order is necessary in this case, which is hereby struck off the file.

THE 31ST JANUARY 1850.

No. 92 of 1849.

Appeal from the decision of Moonshee Gurreeboolla, Moonsiff of Balasore, dated the 24th October 1849.

Casseenath Punda, (Plaintiff,) Appellant,

versus

Government and Puddum Lochun Mundal, son of Nund Kishor Mundal, deceased, (Defendants,) Respondents.

CLAIM, possession and right to hold free from assessment 1 m. 15 gs. 15 bs. of land (as *lakhiraj bilmuter*) in mouzah Yakootpore, pergunnah Sunhut, and the cancelment of the settlement proceeding of the revenue authorities, assessing it as part of 9 ms. 18 gs. 13 bs. of resumed land belonging to Puddam Lochun Mundal, one of the defendants.

The plaintiff stated that the land in dispute formed part of 10 beegahs of *lakhiraj dewuttur* land, granted to his father on the 20th Zeby 1209 U., by Meer Casim Allee, mootawallee of the Kuddum Shureef, at Balasore, on account of which, when it was formerly occupied as a parade ground by Government, he was allowed rent by the collector; and after it ceased to be used as a parade ground, the plaintiff and his mother mortgaged it, on the 17th Poos 1247, to Nund Kishor Mundal on a loan of rupees 12-8. And when the land in dispute was measured in 1249, it was included in the measurement papers as part of the defendants' *lakhiraj khureedah* land, and the rest of the land appertaining to the grant, viz. 3 ms. 4 gs. 12 bs. in Yakootpore, and 9 gs., 6 bs. in Makoolpore, was measured in his own (the plaintiff's) name: and on learning such was the case, he paid his debt to the defendant and redeemed the land, and the 5 ms. 5 gs. 1 b. measured in his own name, was confirmed as *lakhiraj*, but the 1 m. 15 gs., 15 bs. was resumed as part of Puddum Lochun Mundal's land, notwithstanding he proved it to be his, because it had been in possession of the mortgagee for more than a year, and he was referred to the civil court to recover possession.

Puddum Lochun Mundal the defendant, replied that the plaintiff's claim was inadmissible, as he had omitted to state the boundaries of the land in dispute, and the quantity of land he acquired in each mouzah. He also stated that the land in dispute formed a portion of his *khureedah lakhiraj* land, which had been resumed and assessed by Government; and as the plaintiff had sued to be allowed to hold the resumed land as *lakhiraj dewutter*, his claim could not be entertained, as had been decided by the Court of Sudder Dewanny Adawlut in the case of Hurgobind Ghose, petitioner, on the 17th July 1847; and that he, the defendant, was in possession of the disputed land from the 17th Asar 1237, or long prior to the mortgage alluded to by the plaintiff, and the land mortgaged was not measured at the time it was made over to him.

Government replied to the same effect as Puddum Lochun Mundal.

The plaintiff, in reply to the above answers, stated that he had not specified the boundaries or quantity of land acquired in each mouzah, because there was no specification of them in the *sunnud* under which he claimed; but that the land was defined in the deputy collector's rooboocarry; and the case of Hurgobind Ghose quoted by the defendants, afforded no precedent to the present case, as the plaintiff was not a party to the suit decided by the resumption officers.

The moonsiff, on the grounds of non-jurisdiction and the omission on the part of the plaintiff to define the boundaries and mouzahs in which the land claimed, and that acquired by him was situated, dismissed the claim on the precedent of the case of Hurgobind Ghose, petitioner; and against this decision the plaintiff appealed.

JUDGMENT.

Since the order of the lower court is in strict conformity with the precedent quoted, viz., the decision of the Court of Sudder Dewanny Adawlut of 17th July 1847, in the case of Hurgobind Ghose, petitioner, published in the *Government Bengalee Gazette* of the 5th October of the same year, wherein it is laid down that the civil courts are debarred from entertaining claims to the proprietary titles of lands declared liable to assessment by the resumption courts; and although the appellant, in his petition of appeal, urges that his case differs from that of the above named petitioner, inasmuch that he, the said Hurgobind Ghose, had appealed to the special commissioner, and his petition had been rejected, and the appellant had not been in any way a party to the resumption suit, his not having been so can confer no jurisdiction to this court; and as he claimed part of the land resumed by the deputy collector, he *ought* he have appealed to the special commissioner.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and that the decision of the moonsiff be affirmed.

THE 31ST JANUARY 1850.

No. 90 of 1849.

Appeal from the decision of Mohesh Chunder Rai, Moonsiff of Dhamnugur, dated the 1st November 1849.

Harree Naik, (Plaintiff,) Appellant,

versus

Bidyadhur Raot, and on his death, Mooktee Raot, Ras Beharry Naik, Khurnee Naik and Baidnath Behra, (Defendants,) Respondents.

CLAIM, rupees 130, the amount purchase of 2 annas of putna Rugoonathpoor, pergunnah Sunohat, and rupees 33-6-6-4, interest, from the date of sale to the date of suit.

The plaintiff stated that an 8 annas, 5 gundas share of putna Rugoonathpoor, the property of Bidyadhur Raot, was advertised for sale in execution of a decree in favor of Kissub Sahoo, and that while the sale was proceeding, he arranged with Bidyadhur Raot to purchase 2 annas of the said property for the sum of rupees 130, which he gave him in the presence of several respectable persons, and procured the release of the property from sale, but that there was not time then to write out a kubalah on account of the 2 annas, and on the evening of the purchase he, the plaintiff, became insane, and Bidyadhur Raot, in collusion with Ras Beharry Naik and Kurnee Naik, taking advantage thereof, presented a petition to the collector, stating that he had sold 1 anna of the property to the plaintiff for the sum of rupees 130, and praying that he might be recorded as the proprietor of the same; and as the defendant was in possession of the property, and had made a *benam* transfer of a 7 annas, 5 gundas share of it to Baidnath Behra, he instituted the suit to recover the sum of rupees 130, as no kubalah had been executed on account of the land purchased.

Baidnath Behra, defendant, answered that he purchased a 7 annas, 5 gundas share of putna Rugoonathpoor from Bidyadhur Raot in 1254 U., since when he had been in possession, and if the plaintiff had any just claim thereto, he would have made it known at the time of the *dakhil kharij*, or when his name was recorded as proprietor in lieu of that of Bidyadhur. He also stated that he did not know to whom the other 1 anna of the property belonged, but when the property was advertised for sale for arrears of revenue, he paid the rent due from it to save his own share, and when he was about to sue for the amount paid by him on account of the said 1 anna, he learned that it belonged to the plaintiff.

Bidyadhur Raot stated that in Maugh 1252, (it should be 1253), the day before the 8 annas, 5 gundas share of putna Rugoonathpoor was to be sold in execution of Kissub Sahoo's decree, he sold 1 anna out of the said share to Harree Naik, the plaintiff, for the sum of rupees 130, in the presence of Ras Beharry Naik and Kurnee Naik, whom the plaintiff had made defendants in the suit, to prevent them giving evidence on his behalf; and after the kubalah for the 1 anna share was executed, the plaintiff, on the date that the sale was to have taken place, presented a petition to the collector, praying that he might be registered as the proprietor of the said 1 anna share, and after he, Bidyadhur, had countersigned the petition, the plaintiff paid from the purchase money. He also stated that he gave the plaintiff possession of the 1 anna share, and that he had been dispossessed by Brijanund Mahapatur and the other shareholders, and pointed out that, besides filing the petition for the *dakhil kharij*, the plaintiff had filed a *mooktearnamah* in the case, and he denied that he was ill or insane on the night of the sale.

The plaintiff, in reply, urged nothing further than that, if a kubalah on account of the 1 anna share was executed, as stated by Bidyadhur Raot, it would have been registered.

The moonsiff held that it was quite clear, from the petition and mooktearnamah filed by the plaintiff in the dakhil kharij case, that the plaintiff had purchased only a 1 anna share in the property, and that his statement to the effect that he paid the sum of rupees 130 to Bidyadhur Raot on account of a 2 annas share, and that the kubalah was not written in consequence of his becoming insane on the night of the purchase; and that he did not present the petition to the collector to effect the dakhil kharij, was inadmissible, as Gopeenath Mhaintee, who had countersigned the mooktearnamah filed by the plaintiff, in token of his identity, had deposed before the court that it was filed by the plaintiff in *propria persona*, and he therefore dismissed the case.

In appeal, the plaintiff urges principally that no kubalah at all was written, and that the moonsiff should have required Bidyadhur to prove his statement that the kubalah for the 1 anna was executed.

JUDGMENT.

I consider the excuse advanced by the plaintiff for his inability to file a kubalah for the 2 annas share of putna Rugoonathpoor, which he alleges he purchased, viz. that he was insane on the night of the purchase, altogether futile; and I agree with the moonsiff that his purchase of the 1 anna share is fully established by the petition and mooktearnamah filed by him, praying for the dakhil kharij of the said 1 anna share; and if, as stated by the plaintiff, the defendants had fraudulently caused the said petition and mooktearnamah to be filed, the plaintiff would have represented the circumstance to the collector before instituting the suit in the civil court; but this he does not appear to have done, and the petition in question was filed in the plaintiff's name on the very date on which he alleges he purchased the 2 annas share. It is therefore ordered, that the decision of the moonsiff be affirmed, and that the appeal be dismissed, without serving notices on the defendants.

ZILLAH DACCA.

PRESENT : H. SWETENHAM, Esq., JUDGE.

THE 17TH JANUARY 1850.

No. 2 of 1849.

Appeal from the decision of Moulvee Mahomed Nazim, Principal Sudder Ameen of Furreedpore.

Joogulkishen Race, Madhub Chundur, Tehlook Chundur, Moheema Chundur, Gookool Chundur, and Chundur Koomaur Raees, (six Defendants,) Appellants,

(Other six Defendants have not appealed,)

• *versus*

Ubhoya Churn Seekdar and Mohindur Chundur Seekdar, for self and guardian of Pursunokoomar, (Plaintiffs,) Respondents.

Vakeels of Appellants—Nusseerooddeen and Ameerooddeen.

Vakeel of Respondents—Gour Chunder Dass.

SUIT for possession of a share in talooqa Kishen Roopchunder Gooch, kismut Bawuttee Pera, &c., and shares of other talooqas, with mesne profits, valued rupees 4,069-18-1-2, decreed by the principal sudder ameen, 23rd December 1848. Six of the defendants appealed, 22nd January 1849. The pleadings have been completed and the case is ready for decision.

The parties have, however, this day filed a razcenamah and safee-namah, therefore the appeal is struck off the file. Appellants shall receive a certificate for half the amount of stamp duty paid on the appeal.

THE 22ND JANUARY 1850.

No. 8 of 1848.

Appeal from the decision of Syed Abbass Allee, Principal Sudder Ameen of Zillah Dacca.

Busunttee Debbea, widow of Ramnewaz Tewarree, her representative, the donee, Ram Churn Tewaree, (Defendant,) Appellant,

versus

Kishenpershaud Surma, his representative, the purchaser, Ram Churn Pance, (Plaintiff,) Respondent.

Vakeels of Appellant—Gour Chunder and Nundlaul.

Vakeels of Respondent—Rammunee Bhowe, Ameerooddeen, and Gholam Abbass.

SUIT, bonded debt, rupees 750, interest 750, total rupees 1,500, decreed by the principal sudder ameen, 29th March 1848, on the

grounds of the debt being proved by evidence. Defendant appealed, and it appears the evidence is not trustworthy, in fact, that it is false. Without adverting to minor points, which might injure credibility, such as the witnesses having been servants of the plaintiffs, &c., it suffices to notice the circumstance of one Nunna being declared by the witnesses of the plaintiff a principal agent in the money transaction. The original debt was payable after 1 year and 10 months, the suit was not brought for 9 years, which may account for a contingency being forgotten in the scheme of preferring this infamous suit.

It is asserted by the plaintiff that on the 18th Bysack 1245, corresponding with the 29th April 1838, Ramnewaz borrowed rupees 750 from Gopaulpershaud, the father of Kishenpershaud, to be repaid with interest in Maugh 1246.

It is proved by the court records that Nunna, who according to the evidence of plaintiff's witnesses must have been a free agent, at liberty to take the part assigned to him in the money transaction, was confined in hajut tujveez from 17th April until after the 8th May 1838. Persons under trial are kept in the house of correction a considerable distance apart from the jail, where Ramnewaz was imprisoned, under committal to the sessions.

To get out of the scrape respondent's vakeels state that Nunna, when taken backwards and forwards to the magistrate's kucheree, might have induced the burkundazes, under whose protection he may have been, to have accompanied him to the banker's house, which is distant from the jail, to negotiate the loan, but this proposition is not supported by the witnesses; it is contradicted, for they state no one accompanied Nunna, but one of his own neighbours, and one witness stated that Nunna went from Oordoo, his own place of residence, to the banker to settle about the loan, which was ultimately made at the jail door, under a tree, where Nunna was stated by all the witnesses, as the active manager in the business.

This evidence is fatal to the suit. It is unnecessary to notice that one witness could not tell at which jail door the money was paid.

The decision of the principal sudder ameen is reversed. Respondent will be charged with the costs of both courts.

THE 22ND JANUARY 1850.

No. 9 of 1848.

Appeal from the decision of Syed Abbass Allee, Principal Sudder Ameen of Zillah Dacca.

David Mullick Feredoon Beglar, (Plaintiff,) Appellant,

versus

Mirza Ahmed Jan *alias* Mirza Gholam Peer, Mussamut Oojhul Munnee, Mrs. Thangmeer Gregore, the widow of Mr. Gregore Simeon, and Mrs. Sullum Richard Metcalfe, (Defendants,) Respondents.

Vakeels of Appellant—Pudum Lochun and Hurree Kishore.

Vakeels of Mirza Gholam Peer—Ameeroodeen and Gholam Abbass.

Other Respondents defaulting.

THE original suit was to reverse the public sale, and to recover possession, of property, consisting of a lower-roomed brick house and ground with circumjacent wall, wrongfully sold at the instance of Mussamut Oojhul Munnee, in satisfaction of a decree she held for debt due from Mrs. Sullum Richard Metcalfe, the appellant having purchased the said property from Mrs. Thangmeer Gregore, together with mesne proceeds: the suit was estimated at rupees 1,581.

Appellant originally valued his suit at the price he paid for the property, rupees 300, and for undervaluation was nonsuited, he therefore renewed his suit at a valuation of the property, rupees 875, and included mesne proceeds, rupees 706. Manick Chand Dutt had a decree against Mrs. Metcalfe; on his demise, Mussamut Oojhul Munnee, his wife, became his representative, and as Mrs. Metcalfe was residing in the said house and property, Mussamut Oojhul Munnee caused it to be sold, the 30th May 1839, when appellant was absent in Calcutta, his opposition failed to secure his right.

The property originally belonged to Mr. Gregore Simeon, and he conveyed it to his wife, Mrs. Thangmeer Gregore. These facts are disputed. The deed of conveyance enjoins certain religious ceremonies in the Armenian church, and is styled a (church endowment) “*khaneh-i-khoda putr.*”

It is proved that Mrs. Thangmeer Gregore transferred her right and interests in it, by private sale, to Mr. Beglar, appellant, under a deed (*kubalah*) dated the 5th Sawunt 1240 B. S. Mrs. Metcalfe, daughter of Mrs. Gregore, had been allowed to dwell in the house both by the vendor and vendee.

Mrs. Metcalfe is not the sole daughter of Mrs. Gregore, she has another daughter and son living, and she is herself living. Then, the plea respondent, Mirza Gholam Peer, advanced, that Mrs. Sullum Richard Metcalfe was in possession of the property in here-

ditary right, falls to the ground. She could inherit only from her mother, and she is alive, and she is not the only child.

Another plea of Mirza Gholam Peer is, that the conveyance of the property executed by Gregore Simeon in favor of his wife, is of the nature of wuqf property and inalienable, but this argument would rather support Mr. Beglar's claim, more than his own, because the religious ceremony enjoined in the deed of lighting the Armenian church, Mr. Beglar is able and willing to carry into effect; a duty not likely to be performed by a Mahomedan. If the property were not transferable, Mirza Gholam Peer's acquired title therein must be void: if inalienable to one, it cannot be alienated to another.

The principal sudder ameen, however, dismissed the appellant's suit on the 8th April 1848, principally, I conceive, on the grounds of an ameen's report, which remains to be considered. On the 16th November 1846, the principal sudder ameen deputed an ameen to ascertain whether Mr. Gregore Simeon left other heirs besides Mrs. Sullum Metcalfe, and who was in possession from 1236 to 1240, and under what title?

The ameen reported, 11th February 1847, that four persons had deposed before him in the presence of the mokhtars of the parties. Three, out of the four, deposed, Mr. Gregore Simeon has left a son, named Toontoon Gregore, and two daughters, one of whom is Mrs. Sullum Metcalfe, the name of the other was not known to them; all four witnesses stated, Mrs. Metcalfe had been in possession from 1226 to 1240, and two of them said she had been in possession since her father's death as his heir.

The assertion of the two witnesses, who deposed to hereditary possession of the debtor, Mrs. Sullum Metcalfe, before the ameen, is opposed from sources that wholly negative the supposition, without alluding again to the property having been indisputably vested in a person still living, Mrs. Gregore, Gregore Simeon's wife, or to the fact of Gregore Simeon's leaving a son and two daughters all surviving: hereditary possession was denied by Mrs. Sullum Metcalfe herself, in her answer to the nonsuited case of the appellant. It is negatived also by the husband, Mr. Metcalfe, in his deposition on oath, and by the circumstance that Mr. and Mrs. Metcalfe subscribed their names as witnesses to the deed of conveyance of the property from Mrs. Gregore to the appellant, Mr. Beglar; and collusion is not, in any manner, apparent. The proceedings of the court abundantly testify long continued possession of Mrs. Thangmeer Gregore in this property, viz.

Dacca judge's proceedings, 30th July 1823, *in re* Mr. Gregore Simeon *versus* Sumsuddeen Allee Khan and others, to realize from Simeon costs awarded by the provincial court of appeal, rupees 493-8; his property was attached, his wife, Mrs. Gregore, claimed a portion (the subject of the case under investigation) as gifted to her by her husband, under a deed stated hibehnamah, bearing

date the 23rd Chait 1226, which had been registered. In summary proceedings her rights were proved and admitted, and the property was released.

Note.—A copy of this so-styled hibehnamah obtained from the registry office was filed by the respondent, Gholam Peer: it is termed a khaneh-i-khoda putr, and appellant admits it to be a copy of the document under which Mrs. Thangmeer Gregore obtained the property under dispute.

In the case of Khajeh Arratoon Michael, and on his demise, Mrs. Mary Arratoon *versus* Mr. Gregore Simeon, and on his demise, Mr. Arratoon Gregore, his son, (probably Toontoon Gregore of the ameen,) it appears from the Dacca judge's proceedings, dated 21st December 1825, that six houses and lands, khiraj and lakhiraj, were claimed by Mrs. Thangmeer Gregore, which had been attached and they were released, as appertaining to her, with reference to proceedings of the 30th July 1823, and were declared not liable to the decree of rupees 4,821-13, which had been declared against the property of Mr. Gregore Simeon, deceased. This decision was confirmed by the provincial court of appeal, the 27th November 1826.

In the case of Mirza Ahmed Jan, (one of the present respondents) *versus* Arratoon Gregore, the property now litigated was again attached, and by the judge's proceedings, dated 27th February 1832, it was released on the claim thereto preferred by Mrs. Thangmeer Gregore, with reference to her rights established by the proceedings of the 30th July 1823.

Mrs. Sullum Richard Metcalfe, therefore, appears only a tenant at will, and the sale of the property in satisfaction of her debt is nugatory and illegal.

The decision of the principal sudder ameen is reversed, and the appeal decreed. The public sale of the 30th May 1839 is cancelled: possession of the property, together with mesne proceeds, will be restored to appellant. The costs of both courts will be defrayed by Mussamut Oojhul Munnee, who caused the illegal sale for her own benefit.

THE 23RD JANUARY 1850.

No. 14 of 1848.

Appeal from the decision of Moulree Mahomet Nazim, Principal Sudder Ameen of Furreedpore.

Khoondkar Nisar Allee and Sheikh Asad Ullah, (Defendants,) Appellants,

versus

Khoondkar Mahomed Nazim, (Plaintiff,) Respondent.

Fakeels of Appellants—Gholam Abbass and Ameerooddeen.

Fakeel of Respondent—Hurree Kishore.

SUIT for damages for libel, laid at rupees 800. Respondent wished to raise the rents of the appellants, his tenants.

They, at sundry times and in sundry places, made use of opprobrious expressions derogatory to the character of the respondent. The principal sudder ameen awarded damages rupees 200, together with the whole costs. In appeal, there appear no grounds for interfering in his decision, which is accordingly affirmed. The appeal dismissed with costs.

THE 24TH JANUARY 1850.

No. 13 of 1848.

Appeal from the decision of Syed Abbass Allee, Principal Sudder Ameen of Zillah Dacca.

Mussumaut Hursoondurree, widow of Raj Chundur Ghose and mother of Kashee Chundur Ghose, minor, (Plaintiff,) Appellant,

versus

Mussumaut Kuroonamaee, widow of Ramdulal Ghose, (Defendant,) Respondent.

Vakeels of Appellant—Nundlaul, Roopchunder, and Rammunee Bhose.

Vakeel of Respondent—Gour Chunder Doss.

SUIT to recover rupees 1,571-3, under a written agreement (sulhnamah.)

Plaintiff's (appellant's) statement:

Sumanund, the father of appellant's husband, Raj Chundur Ghose, and Ramdulal Ghose, the husband of respondent, were brothers; by an agreement, executed the 24th Bhadoon 1241, a distribution of their landed property was made, and a debt due from the general estate incurred in their mother's funeral expenses, &c., amounting to rupees 5,499, was allotted for payment, two-thirds by the former, and one-third, or rupees 1,833, by the latter; by the terms of the agreement this sum of rupees 1,833 was to be paid by Ramdulal or his heirs or representatives to Sumanund, or his heirs or representatives: the latter party held possession of the whole estate till the demise of Sumanund in Phalgun 1243, when Ramdulal got possession of one-third, his share of landed property. Up to Maugh 1243 Sumanund realized rupees 300; from Maugh 1244 to Assin 1245, Raj Chundur Ghose, appellant's husband, received rupees 60. The balance is claimed, Sicca rupees 1,473, or Company rupees 1,571-3. There were several bonds for the whole debt, which had been discharged by Sumanund, Raj Chundur, and appellant, and she filed them.

The respondent (defendant) admitted the agreement and the amount of debt therein stated, as correct, but stated, Sumanund held possession of all the lands to pay it off; at the time of his demise he had paid off rupees 3,099, leaving a balance of rupees 2,400. His son, Raj Chundur, and respondent's husband, Ramdulal, made up account and came to an understanding, and a counter-agreement,

engrossed on stamp paper, bearing date 21st Phalgun 1243, to effect, that Sumanund having paid off rupees 3,099, there remained a balance of 2,400, of this sum rupees 156 only were due on bond; the mahajun had no documents for the remainder, rupees 2,244; that if they were compelled by law to pay that sum, one-third shall be paid by Ramdulal, two-thirds by Raj Chundur. The sum of rupees 156 were to be paid by them in the same proportion accordingly from the 21st Phalgun 1243, the date of this deed of agreement to Assin 1245. Ramdulal Ghose, respondent's husband, paid his proportion of the rupees 156, viz. rupees 60; no claim was ever preferred for the rupees 2,244, for which there was no document, and claim is now barred by the statute of limitation.

Raj Chundur's alleged stipulation is denied by appellant, who also denies that the debt of rupees 2,244 was not upheld by documents.

The principal sudder ameen adjudged that Raj Chundur's counter-agreement had been fully proved by the subscribing witnesses, that plaintiff had not named the mahajun to whom money was due, the amount due, under what bond, the date or year of it before whom the money was taken, and when, how it had been repaid, and the share due by the defendant. He dismissed the suit on the 12th May 1848.

Appellant pleads it was unnecessary to produce mahajunnee accounts for the agreement, on which she claimed stipulated payment to her and not to any mahajun, that in 2 years and 5 months, when Sumanund held possession of all the lands to pay off the debts, rupees 3,099 could not have been realized, for they had since been let for rupees 100 per annum, and that the evidence of the witnesses to Raj Chundur's agreement were not trustworthy, being contradictory.

There appear no fair grounds for interfering with the decision of the principal sudder ameen. On inspecting the several bonds filed by appellant to prove payment by her family, it appears that most of these bonds were discharged previous to the date of the agreement, that is to say, prior to the 24th Bhadoon 1241. On a careful perusal of the depositions of the witnesses to the second agreement, executed the 21st Phalgun 1243 by appellant's husband, there appear no discrepancies to vitiate their evidence, and the abstract of account on which the latter agreement was based seems not open to exception. I therefore affirm the principal sudder ameen's decision, and dismiss the appeal with costs.

ZILLAH MIDNAPORE.

PRESENT: W. LUKE, ESQ., JUDGE.

THE 3RD JANUARY 1850.

No. 149.

*Appeal from a decision of the Principal Sudder Ameen of Midnapore,
Mr. A. Davidson, dated 19th May 1849.*

Tarapershad Paul, (Defendant,) Appellant,

versus

Tarapershad Bhooya, (Plaintiff,) Respondent.

THIS suit was originally tried in the year 1844: it was to foreclose a mortgage and for possession. The plaintiff obtained a verdict in his favor, which decision was affirmed in appeal. A special appeal was admitted by the Sudder Court on 13th June 1846, and the suit remanded to the principal sudder ameen with instructions to require from appellant any proof, documentary or oral, he might have to produce in support of his allegation that the plaintiff and the mortgagers have acted collusively. The appellant was accordingly called upon for his proofs. He tendered six witnesses, whose testimony, in the absence of the slightest documentary proof, the principal sudder ameen did not deem trustworthy. On the other hand, relying on the evidence on the part of the plaintiff, and the acknowledgment of the mortgagers, he believed the engagement between them to have been made in good faith, and decreed for plaintiff accordingly. The defendant appealed from this award to the judge, who, on the 5th April 1848, remanded the case for two reasons: first, that the evidence of the plaintiff's witnesses might be taken in the presence of both parties, (authenticated copies only of their evidence given in another case having before been received,) that appellant might have an opportunity of cross-questioning them, and secondly, to take measures to secure the attendance of appellant's principal witnesses. The plaintiff's witnesses were accord-

ingly examined on oath in the presence of the parties, and the proper and legal course taken to secure the attendance of defendant's principal witnesses. This failing, the defendant, on the 9th May 1848, was called on to depose on oath that his absent witnesses were absolutely necessary to prove his alleged plea of collusion. He, however, failed to appear, and moved the court of first instance for permission to swear by proxy, which request, being opposed to Section 6, Regulation IV. of 1793, and Construction No. 159, was refused. The lower court, having thus given defendant every legal assistance to prove collusion, and seeing no grounds for doubting the evidence adduced on the part of the plaintiff, adhered to the verdict it had formerly given in plaintiff's favor.

The defendant again appeals, and urges sundry pleas against the decision of the principal sudder ameen. The matter of adjudication must, however, be limited to two points, those two for which the case was remanded for revision, viz. the taking the evidence of the witnesses for the prosecution in the presence of the parties, and affording defendant every legal assistance to procure the attendance of his witnesses. This having been done and the defendant (appellant) having totally failed to prove collusion, there appears no reason to interfere with the decision of the lower court, which is hereby affirmed, and the appeal dismissed with costs.

THE 8TH JANUARY 1850.

No. 192.

*Appeal from a decision of the Moonsiff of Midnapore, Gunga Gobind
Udhicarry, dated 16th May 1849.*

Mocheeram Khathur, (Defendant,) Appellant,

versus

Bikram Pershad Mundul, (Plaintiff,) Respondent.

THIS is an action for a bond debt, laid at rupees 8-10-8. The bond bears date 21st Ughun 1254 Umlee, to be redeemed in the month of Bysack following.

The defendant denies and pleads that the suit proceeds from enmity; because defendant refused to pay plaintiff rent to the amount of 7 rupees.

The moonsiff deems the evidence in support of the claim, clear and satisfactory, and, in the absence of any proof on the part of the defendant of the pleas he has set up, gives a verdict for the plaintiff.

In appeal, the defendant reiterates what he has pleaded in the court of first instance.

On a review of the proceedings, I see no reason to disturb the moonsiff's decision, which is hereby affirmed, and the appeal dismissed, without serving a notice on the respondent.

THE 11TH JANUARY 1850.

No. 151.

Appeal from a decision of the Moonsiff of Pertabpore, Golam Sobhan, dated 15th May 1849.

Gowree Howrah, (Plaintiff,) Appellant,

versus

Sreedhur Kobindra and others, (Defendants,) Respondents.

THIS is an action for compensation, for damage done to crops and fishery, laid at rupees 30-7-2.

Plaintiff states that he rents 1 beegah, 19 cottahs, 1 pao of land, including tanks and pools of water; that in 1253 Umlee, he executed lease and counterpart for the said land with the heirs of Gunga Narain Kobindra and Kalee Chunder Kobindra, Premchand Kobindra, and Tarachand, and that, in the year 1256 Umlee, the defendants, Sreedhur and Nobokishto, took forcible possession of the fish in the pools.

The defendants, Sreedhur and Nobokishto, deny, and plead that the land and produce are theirs, in right of a deed of adjustment filed in the civil court, agreeably with which they obtained possession.

The moonsiff grounds his judgment on the report of the ameen deputed to make a local enquiry, deeming it more worthy of credit than the evidence for the prosecution, and gives a verdict for the defendants accordingly.

The moonsiff assigns no reason why defendants' version of the matter should be entitled to the most credit. He has omitted to call for important evidence, viz., the solanamah in virtue of which defendants maintain their right of possession. Defendants say, by the terms of a solanamah filed in the civil court, in a suit wherein Kalachand, Tarachand, and defendants' father, Damooder, were concerned, they obtained the very land now in dispute. This document has never been produced in the lower court, neither the proof of its existence, nor that its provisions were ever carried into effect have been established. The investigation is imperfect, and I therefore admit the appeal and remand the case for further inquiry. The moonsiff must first satisfy himself that defendants' title deeds are valid, and then adjudicate. The costs of stamps to be refunded.

THE 14TH JANUARY 1850.

No. 153.

Appeal from a decision of the Moonsiff of Nimal, Mr. J. Snell, dated 15th May 1849.

Goluck Moorah, (Plaintiff,) Appellant,

versus

Beekram Bhooya and others, (Defendants,) Respondents.

THE plaintiff (appellant) sues for a bond debt. The defendants deny the claim, and plead that the suit has been brought to gratify

malicious ends. The moonsiff attaches no credit to the bond, though certified by three attesting witnesses. He is of opinion, the decision of the criminal court, copy of which is filed in the case, is conclusive that enmity exists between the defendants and plaintiff's immediate connections; that the bond has, from the appearance of the ink, been *recently* drafted on old stamp paper; and that the signature on the bond is not that of the defendant, Beekram Bhooya, and gives a verdict for defendants accordingly.

I see no grounds for interfering with this decision. The plaintiff, in his rejoinder, does not deny defendants' statement, that Canoo Moora and plaintiff are one and the same party, the former being the person with whom defendants are at issue, and who was convicted in the criminal court on the complaint of the defendant, Beekram Bhooya. The probabilities are that the defendants' statement, that the suit is vexatious and vindictive, is true, especially as the bond itself is a most suspicious document, and the evidence adduced in support of its validity unsatisfactory and unworthy of credit.

The appeal is dismissed, and the moonsiff's decision affirmed, without serving a notice on the respondents.

THE 14TH JANUARY 1850.

No. 155.

Appeal from a decision of the Moonsiff of Kulmejole, Injud Alee, dated 21st May 1849.

Kistopershad Munna and others, (Defendants,) Appellants,

versus

Ram Tunoo Khutooa, (Plaintiff,) Respondent.

THE plaintiff sues to reverse a decision made summarily, releasing certain property attached, at the instance of plaintiff, in execution of a decree. It is not necessary to enter into the merits of the case at this stage of the proceedings, as the present enquiry must be limited to one plea urged in appeal, viz. that the moonsiff's proceedings are informal, inasmuch as he has disposed of the case *ex parte*, without ascertaining in the prescribed manner that notice had been duly served on the defendant Kistopershad. It appears that the notice was issued on the party aforesaid, and a return made by the peada deputed to serve it, which he duly certified on oath, that the said defendant was *non est inventus*. The moonsiff then summoned the witnesses, who signed the notice in proof of its having been duly served, but the summons could not be served, as they were not to be found. The moonsiff then issued an ishtchar, requiring the witnesses to appear or incur the penalty of a default. They still failing to attend, the moonsiff disposed of the case *ex parte*, according to Clause 2, Section 21, Regulation XXIII. of 1814, and

Construction No. 775. The evidence of witnesses to the service of process is imperative. The moonsiff, in failure of obtaining the appearance of witnesses to swear to the service of the first notice on the appellant, should have required the plaintiff to sue out a second, and have taken precautions that its service was duly certified by two or more respectable neighbours, or by deputing two respectable parties to witness its execution, whose appearance could be procured; and this is the course which he must now pursue. The appeal is therefore admitted, and the case remanded, that he (the moonsiff) may proceed as indicated. The cost of stamp to be refunded in the usual manner.

THE 15TH JANUARY 1850.

• No. 47.

Appeal from a decision of the Moonsiff of Kaseegunge, Khyrat Hossein, dated 17th January 1849.

Sheikh Golam Hyder, (Defendant,) Appellant,

versus

Nobin Chand Bhooya, (Plaintiff,) Respondent.

THIS is an action for balance of rent, laid at rupees 134-6-12. The plaintiff states that 4-16ths of hooda Kulecara Bulrampore, Sākmundul, &c., were granted to his ancestors by the zemindar as subsistence. In the year 1245 Umlee, the said zemindar's estates, of which the above villages were part, were sold for arrears of revenue and purchased on the part of Government, who rented them on a farming lease to Messrs. J. and R. Watson. In 1247, from some illegality in the sale proceedings, the estates were restored to the zemindar, and in 1252 Umlee, the plaintiff likewise regained possession of his rights and interests in the 4-16ths aforesaid. The appellant is a tenant of plaintiff's, and his annual rental before the estate was sold was 56-14-12 and 11-2-3 in kind. From the year 1245 to 1251 Umlee, according to the accounts adjusted on this jumma, the defendant is liable for a fourth of this sum, viz. rupees 134-6-12, including interest, and in failure of recovery he (plaintiff) now sues.

The defendant denies, and pleads that he holds pottahs or leases from the surburakar of the plaintiff's grandfather and others, for 41-4 annually, in money, and kooree 5-3-1 in kind, agreeably with which he has paid his rents and holds receipts for the same.

The moonsiff rejects the leases filed by defendant as unworthy of belief, as they are not supported by creditable testimony and not recognized by the farmers, Messrs. Watson, as is apparent from the lotbundee of estate, when they were in possession, agreeably with which they for three years realized rents from the defendant. The moonsiff considers the jumma bundee, filed by the plaintiff for the

year 1251 Umlee, valid and confirmatory of the data on which plaintiff's claim is based, and accordingly gives a verdict for plaintiff, with certain remissions from the year 1245 to 1251 Umlee, with interest, allowing defendant credit at the same time for the various items exhibited in his dakhillas *duly authenticated*.

It appears from the records of the case, that, when the Government was pleased to cancel the sale of the estate, it was with the proviso that all undertenures should resort to their original *status*, as existing before the sale took place in 1245 Umlee. The jumma-bundee of 1244 Umlee, the year immediately preceding that in which the sale was made, shows that the defendant's annual liabilities in Bulrampore amounted to Sicca rupees 44-4-18, and in Sākhmundul to 8-10-16; as nothing has been urged to the contrary by either party, it must be assumed that that jumma-bundee is correct. There are no intermediate accounts, 'excepting the lotbundee of Messrs. Watson for the three years they were in possession, the jummas specified in which were only assumed as correct on the verbal admission of the tenants for facility of collection, and till the actual out-turn of each holding could be ascertained by local inquiry.

The only evidence, then, that defendant's rent is 56-14-12, is the measurement chitta and jumma-bundee of 1251 Umlee. A jumma-bundee framed by plaintiff in that year cannot take effect retrospectively, and be received as evidence of the out-turn of the estate for seven years, that plaintiff was not in possession. The aggregate of the jumma-bundee of 1251 Umlee, is greatly in excess of that of 1244 Umlee, and before the rates specified in the latter year can be enhanced, the plaintiff must proceed as indicated in Sections 9 and 10, Regulation V. of 1812; in failure of having done so, he can assume no title such as has been conferred on him by the lower court, to increase the rate of previous years, and to recover balances calculated on it. The rate of interest appears also to have been calculated on erroneous data; plaintiff demands compound interest, that is, interest on interest charged on each kist in arrear as per jumma-wassil-bakee; he is entitled to simple interest on the actual balance of rent for each year and no more. The lower court is correct in rejecting the pottahs, (which have no doubt been prepared for the occasion,) and in recognizing the dakhillas supported by evidence as valid; but its decision must be modified in other points. The appeal is accordingly decreed, with costs in proportion to the award, and it is ruled that the accounts of 1244 of Bulrampore, as pertaining to the year immediately preceding the sale, and therefore exhibiting the *status* of the lease at that period, be the basis for calculating the demand for each year that plaintiff was dispossessed, interest being adjusted with reference to the foregoing remarks, and defendant receiving credit according to the dakhillas proved to be authentic, as ordered by the moonsiff. The balance of rent in kind

to be adjusted as proposed by the lower court, except that the value of the crop of each year be estimated, according to the custom prevailing in the pergunnah in which defendant's lands are situated.

THE 15TH JANUARY 1850.

No. 48.

Appeal from a decision of the Moonsiff of Kaseegunge, Khyrat Hossein, dated 17th January 1849.

Sheikh Golam Hyder, (Defendant,) Appellant,

versus

Nobin Chand Bhooya, (Plaintiff,) Respondent.

CLAIM, 21-8-10. Parties in this suit are the same as in case No. 47, and the circumstances attending it, are identical. In adjusting plaintiff's demand for rent for mouzah Sākhmundul, the same course might have been taken as pointed out in case No. 47, but defendant admits that his jumma is a trifle in excess of the jumma-bundee of 1244 Umlee. The latter must therefore be the basis of calculation. The appeal is decreed, with costs, and, in modification of the award of the moonsiff, it is directed that the accounts be adjusted accordingly.

THE 17TH JANUARY 1850.

No. 157.

Appeal from a decision of the Moonsiff of Kaseegunge, Khyrat Hossein, dated 26th May 1849.

Musst. Rajessuree Dey, wife of Gungaram Bhooya, deceased, and Dwarkanath Bhooya, (Defendants,) Appellants,

versus

Sreenath Chuckerbutty, (Plaintiff,) Respondent.

THIS is an action for a bond debt, laid at Company's rupees 29-11-3. The plaint sets forth that defendants gave plaintiff a promissory note for rupees 25, to be redeemed in Bysack 1255 Umlee, in failure of which the present suit is brought.

The defendants deny the claim, and plead that they borrowed 5 rupees and executed the bond on which the plaintiff now sues, but that the bond has been interpolated and the amount formerly specified altered from 5 to 25 rupees.

In the opinion of the moonsiff, the plaintiff has clearly and satisfactorily established his claim. That all the circumstances elicited from the records of the case are in favor of its validity, and further strengthened by Dwarkanath's (defendant's) admission that he executed the bond. That which the moonsiff considers as satisfactory proof, this court views with the strongest suspicion. It is true the

defendant Dwarkanath admits that he executed the promissory note, but he further urges it has been interpolated and altered. The main point therefore for adjudication is, whether or not the bond has or has not undergone any alteration since it was originally drafted and signed by the defendant Dwarkanath. From a careful inspection of the deed there cannot be a doubt that the word which specifies the amount of loan made has been altered, and that the alteration or addition is in those letters which convert the word *paunch* into *puchees*. The addition has evidently not been made at the time the deed was drawn up, as the ink is of a distinct color and comparatively quite fresh. The figure 2 also bears the appearance of having been inserted before the figure 5, by a different hand to that in which the bond is engrossed, as it differs in form and character from the figure 2, which occurs in two other parts of the deed, and which, to all appearance, were inserted when the document itself was drafted. Again, the names of the witnesses, who certify the deed, have, beyond all doubt, been added to the bond at some time subsequent to its date: their testimony of the loan having been made and deed signed in their presence, is therefore beyond probability. For these reasons the court gives credit to defendant's pleas, and decrees the appeal, with costs, (respondent's vakeels being present,) and reverses the decision of the lower court

THE 21ST JANUARY 1850.

No. 160.

Appeal from a decision of the Moonsiff of Kaseegunge, Khyrat Hossein, dated 6th June 1849.

Goluck Mohun Nundee, (Plaintiff,) Appellant,

versus

Goorooopershad Hara, (Defendant,) Respondent.

PLAINTIFF sues to recover rupees 15-14, on a promissory note, bearing date 15th Maugh 1256 Umlee, to be redeemed in ten days.

The defendant pleads that the brother of plaintiff is his landlord, with whom he is at issue regarding the payment of certain cess. This cess the said landlord extorted from some of defendant's under-tenants, who sought redress in the deputy magistrate's cutcherry at Jehanabad, and, on defendant's evidence, the said landlord was fined; out of revenge he confined defendant in his cutcherry, and, by threats and intimidation, compelled defendant to put his signature to the promissory note.

The moonsiff, without alluding to the truth or otherwise of defendant's pleas, rejects the promissory note as invalid, the attesting witnesses failing to recognize the defendant when called on to point him out in court. I see no reason to disturb this decision. Of the three witnesses examined, two identify on oath separate persons as

the defendant, viz., Chintamunee and Takoor Doss, and the third points to defendant, and expresses a doubt that he may or may not be the man. From a review of the proceedings there can be no doubt that the claim is vexatious and unfounded, and that the witnesses cited as having attested the promissory note never saw the defendant before he appeared in court in the present suit.

The appeal is dismissed without serving a notice on the respondent.

THE 21ST JANUARY 1850.

No. 162.

Appeal from a decision of the Moonsiff of Kaseegunge, Khyrat Hossein, dated 6th June 1849.

Goluck Mohun Nundee, (Plaintiff,) Appellant,

versus

Ramkishto Dugrah, (Defendant,) Respondent.

THIS is an action to recover 20 rupees 5 annas, on a promissory note.

The circumstances attending this case are similar to those recorded in case No. 160. The defendant offers the same pleas as Goorooopershad. The witnesses cited by plaintiff are the same as in case No. 160, and for the like reasons their testimony is utterly unworthy of credit.

They are unanimous in describing the defendant, as a man of thirty-two years of age, when there can be no question, the moonsiff observes from personal inspection and inquiry, that he is sixty, and that consequently the witnesses could never have seen him. I see no reason to interfere with the moonsiff's decision, which is hereby affirmed, and the appeal dismissed.

THE 22ND JANUARY 1850.

No. 168.

Appeal from a decision of the Moonsiff of Tumlook, Waris Alee, dated 9th June 1849.

Gopeenath Roy, (Plaintiff,) Appellant,

versus

Bungsee Bhukta and others, (Defendants,) Respondents.

THE plaintiff sues for a bond debt, rupees 63-1-12. The bond bears date 30th Poose 1253 Umlee, to be redeemed in the month of Jete of the same year.

The defendant denies, and pleads that the suit is vexatious, and brought to serve a malicious purpose.

The moonsiff gives a verdict for the defendant. The only evidence in support of the claim is that of three witnesses, which, he observes,

is unworthy of credit, as being contradictory and improbable, added to which one witness, who deposed to having attested the bond when called on to identify his signature, pointed out that of another attesting witness.

On a review of the proceedings, I see no reason to disturb the proceedings of the lower court, which are hereby affirmed, and the appeal dismissed, without serving a notice on the respondent.

THE 22ND JANUARY 1850.

No. 169.

Appeal from a decision of the Moonsiff of Tumlook, Waris Alee, dated 9th June 1849.

Gopeenath Roy, (Plaintiff,) Appellant,

versus

Nurhuree Sawunt, (Defendant,) Respondent.

THIS suit is similar to the previous one, No. 168, the difference only being in the party sued; the defendant denies and the moonsiff gives a verdict in his favor. The witnesses, the moonsiff remarks, are unworthy of credit. One could not point out the defendant in court, though he was present; the evidence of another was rejected by plaintiff, because he had colluded with the defendant; and that of the third was contradictory and improbable. I see no reason to interfere with the decision of the lower court, which is hereby affirmed, without serving a notice on respondent.

THE 22ND JANUARY 1850.

No. 170.

Appeal from a decision of the Moonsiff of Pertabpore, Golam Sobhan, dated 9th June 1849.

Soonder Doss, (Plaintiff,) Appellant,

versus

Suroop Mytee, (Defendant,) Respondent.

THIS is an action to recover rupees 56-15, on a promissory note, bearing date 16th Maugh 1250 Umlee, to be redeemed in Aughun 1251 Umlee.

The defendant denies, and pleads that plaintiff is the representative of other parties who have instigated him, from revengeful motives, to prosecute.

The moonsiff observes that two of the attesting witnesses have appeared, and sworn to the fact of the money having been given

to, and the note executed by, defendant in their presence, but as they are quite illiterate, their testimony is of no value. The moonsiff repeatedly called on plaintiff to produce the writer of the deed, and failing to procure his appearance, he gives a verdict for defendant.

I see no grounds for disturbing his decision. The promissory note is engrossed, signed, and attested by one and the same party, which party the plaintiff is unable to produce. The evidence of the two witnesses, who do appear, is worthless, inasmuch as they attempt to prove too much by deposing to certain details relative to the hour, the day, and month, six years ago, as having occurred in their presence, details it is quite beyond probability they could remember. The promissory note bears all the appearance of having been recently drafted, *after* the stamped paper had been torn and creased, which it could scarcely bear if engrossed on the date specified, a few days after the paper was purchased. The appeal is dismissed, without serving a notice on the respondent.

THE 24TH JANUARY 1850.

No. 166.

Appeal from a decision of the Moonsiff of Pertabpore, Golam Sobhan, dated 2nd June 1849.

Adytee Chuckerbutty and another, (Defendants,) Appellants,

versus

Seeromonee Sawunt, (Plaintiff,) Respondent.

THE plaintiff sues for a bond debt. The defendants deny the claim and offer various pleas, amongst others that plaintiff is at enmity with them, because they will not consent to sell a piece of ground contiguous to his (plaintiff's) house, and that he has frequently threatened to prosecute civilly or criminally, in revenge for their refusal. Defendants, in proof of these pleas, cited several witnesses, by whose testimony they are confirmed.

The moonsiff, in his decision, makes no allusion whatever, either to these pleas of defendants or to the evidence of the witnesses, and his investigation is therefore incomplete.

The appeal is admitted, and the case remanded to the moonsiff, who will be pleased, after considering defendants' objections and the evidence in support of them, to state his opinion of how far they affect the merits of the case, and then to dispose finally of the suit.

The cost of stamp to be refunded as prescribed by the law.

THE 24TH JANUARY 1850.

No. 174.

Appeal from a decision of the Moonsiff of Kaseegunge, Khyrat Hossein, dated 13th June 1849.

Dwarkenath Bhooya and others, (Defendants,) Appellants,
versus

Sreenath Chuckerbutty, (Plaintiff,) Respondent.

THE plaintiff sues for a bond debt, and the defendants, in reply, deny, and plead that the plaintiff is at enmity with one Bugheree Bhooya, a connection of defendants, who prosecuted plaintiff in the criminal court, in revenge for which he now sues them (defendants.) In support of this plea they file a list of witnesses to be cited, and the lower court accordingly issues a summons, but, before a return is made, the moonsiff, on the 11th June, the very day on which he had passed orders for summoning the witnesses, holds a proceeding declaring their attendance unnecessary, as according to defendants' admission they could only depose to the existence of enmity on the part of plaintiff since 1255 Umlee, whereas the bond on which plaintiff sues is dated 1254 Umlee. Until the fact is proved, it does not follow that, because the bond is dated 1254, it was necessarily executed in that year. The moonsiff's premises are unsound and inconclusive. Having admitted defendants' proofs and summoned his witnesses, he was bound to postpone his decision till they appeared, or the period of service of the dustuck had expired, viz. after four days from the date of its issue. The dustuck was issued on the 12th June, and the time allowed for service was four days, a return was made on the 12th, to the intent that defendants failed to point out the witnesses, and on the 13th the moonsiff decided the suit, which was irregular. The appeal is accordingly admitted, and the case remanded, that defendants' witnesses may be duly and legally summoned. The moonsiff, after hearing their evidence, will dispose of the case on its merits.

The cost of stamp to be refunded in the usual manner.

THE 28TH JANUARY 1850.

No. 142.

Appeal from a decision of the Moonsiff of Anundpore, Omeschunder Mookerjea, dated 5th May 1849.

Messrs. J. and R. Watson, (Plaintiffs,) Appellants,
versus

Sonatun Roy Sirdar, (Defendant,) Respondent.

THIS action was brought to set aside an award made by the collector under the provisions of Regulation V. of 1812. The plaintiffs distrained the defendant's crops for a balance of rent on account

of peshkus, to remove which, the latter appealed to the collector, who, thinking the matter at issue involved a question of right, gave a verdict in his favor. The plaintiffs claim rent under the denomination of peshkus from all paiks (the defendant included) holding jagheer lands in their estate. The defendant denies his liability, and pleads that these lands were specially exempted from the payment of any tax at the decennial settlement, and did not form part or portion of the lease granted by Government to the zemindars. The merits of the case are similar to those recorded in case No. 123, decided by this court on the 26th December 1849. The moonsiff is of opinion that the lands, in which defendants have holdings, did not form part of the lease granted to the zemindars at the decennial settlement, and it is *probable*, he remarks, that they were exempted from assessment on the understanding that the paiks in possession were, in consideration of the remission, to render their services to the state for police purposes.

This inference of the moonsiff, however, is entirely subverted by the documentary evidence in the suit, particularly by the lease and counterpart of the zemindars entered into with the Government in 1207 Umlee, copies of which were filed by the defendant. From these it is clear that the whole of the jagheer paik lands were included in, and formed part of, the zemindar's settlement in 1207, and that he (the zemindar) was from that time made liable for peshkus, or quit rents, arising from the said lands, and consequently he or his representative must have the right to enforce by legal means the payment of peshkus, and in the exercise of it is fully warranted to distrain the defendant's crops, when he became defaulter.

The appeal is decreed with costs, and the moonsiff's decision reversed.

THE 28TH JANUARY 1850.

No. 148.

Appeal from a decision of the Moonsiff of Anundpore, Omeschunder Mookerjee, dated 8th May 1849.

Messrs. J. and R. Watson, (Plaintiffs,) Appellants,

versus

Mochecram Gural and Brijomohun, (Defendants,) Respondents.

THIS action, like that recorded in No. 142, is brought to reverse a judgment of the collector under the provisions of Regulation V. of 1812. The circumstances attending it are exactly similar to those recorded in the case above quoted, and, for like reasons, the appeal is decreed with costs, and the decision of the lower court set aside.

THE 29TH JANUARY 1850.

No. 172.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 15th June 1849.

Rampershad Behrah and others, (Plaintiffs,) Appellants,
versus

Mudhoosoodhun Putty, Choondea Debea, and others, (Defendants,) Respondents.

THIS is an action for right to attach and bring to sale certain rights and interests in talook Radabullub Chuck, in execution of a decree, laid at rupees 1,129-4-5.

The plaintiffs represent that they held in farm certain villages of the chuck aforesaid; that during their tenure the entire talooka was advertised for sale for arrears of revenue; that, to protect their own interests, they made good the balance of Government revenue and sued that party, Mudhoosoodhun Putty, by whose default the estate was rendered liable to sale, and obtained a decree. In execution thereof, they attached Mudhoosoodhun's rights and interests in Radabullub Chuck. The defendant, Choondea Debea, then preferred claims to that property, which were admitted by the principal sudder ameen, and his judgment was affirmed in appeal. The plaintiffs seek now to set aside this summary award, and to obtain an order to bring the property to sale.

The defendant, Choondea, pleads that she holds certain interests in Radabullub Chuck, in right of her husband, deceased. That at the time of his death, the defendant, Mudhoosoodhun, usurped possession and maintained it until the property was restored to her by a decree of court. That the defendant, Mudhoosoodhun, whilst in possession, withheld purposely the payment of revenue, with a view to bring the estate to sale, and that he individually, and not the estate, is liable for what plaintiffs may have paid.

The principal sudder ameen observes, "by the dakhillas adduced by them (the plaintiffs) it appears they paid into the collectorate rupees 743, on account of defendant, Mudhoosoodhun Putty; but there is no proof that the money was paid in satisfaction of arrears accruing from the mouzahs now claimed, but admitting the fact, the payment as we said before was made on Mudhoosoodhun's behalf, and also to protect plaintiff's interest, who had obtained the said talook in ijara from him, who was at the time in wrongful possession, as is clearly proved by a decree filed by Chundra, therefore she cannot be made answerable for plaintiffs' claim, nor can the said mouzahs of which she had been ousted by the said Mudhoosoodhun. Had Chundra got the estate by gift or descent from him, or had he been still in possession, or had it been shown that he was in collusion with her, then indeed the case would have been different. The plaintiffs

argue that if they had not paid the Government revenue, the mouzals would never have come into Chundra's possession. That is possible, but that fact does not give them a lien, for the arrears did not accrue from her default, and to make her landed estate answerable would be to give a premium to the ejector, Mudhoosoodhun Putty, and dismisses the suit accordingly."

The plaintiffs, in appeal, urge the same pleas as below. From the records of the case it is established that defendant, Mudhoosoodhun Putty, usurped the defendant Chundra's property, and retained possession until ejected by a decree of the court. To rule that Chundra's property was liable for Mudhoosoodhun's default when in wrongful possession, would be, as the lower court observes, to recognize and sanction the illegal acts of Mudhoosoodhun. On a careful review of the proceedings, I see no grounds for disturbing the decision of the lower court, which is hereby affirmed, without serving a notice on the respondents.

THE 29TH JANUARY 1850.

No. 179.

Appeal from a decision of the Principal Sudder Ameen, A. Davidson, Esq., dated 14th June 1849.

Bhagurutee Chand, (Plaintiff,) Appellant,

versus

Hurnarain Dey, (Defendant,) Respondent.

THIS is an action for possession of 5 beegahs of lakhiraj land, with mesne profits, laid at rupees 114-7-8.

The principal sudder ameen, without entering into the merits of the case, nonsuited the plaintiff, because he had not made the zemindars parties to the action, and had taken no steps to rectify the omission. It would appear that neither in the court of first instance, nor in that of the principal sudder ameen, was any preliminary inquiry made (as required in the Circular Orders of the Sudder Dewanny Adawlut, dated 13th September 1843, para. 2,) into the plea of non-jurisdiction offered by the defendant. The suit was allowed to proceed and become ripe for decision, when the flaw in the plaint was discovered and the plaintiff nonsuited. The omission was that of the court which tried the case, and plaintiff should not be made answerable for it.

The appeal is accordingly admitted, and the case remanded to the principal sudder ameen, who will restore it to his file and proceed as indicated in the Circular Orders before quoted, giving the plaintiff the opportunity of rectifying his error for which he has been nonsuited.

THE 31ST JANUARY 1850.

No. 180.

*Appeal from a decision of the Moonsiff of Kulmijole, Imjad Alee,
dated 28th June 1849.*

Puddolochun Sein, (Plaintiff,) Appellant,

versus

Bheem Dyan Sein, (Defendant,) Respondent.

THIS is an action for a bond debt, laid at Company's rupees 230-8-11.

The defendant denies, and pleads that he is unacquainted with the plaintiff, but that he is at feud with one Bhuggut Lochun, by whose instigation the present suit has been instituted.

The moonsiff attaches no credit to the bond. The appearance of the ink which is quite fresh, and has soaked through the paper; the writing, which has been carried over the creases of the paper, warranting the inference that the paper was bought long anterior to the date the bond was engrossed; the absence of any endorsement on the stamp paper; the witnesses, with one exception, being unable either to read or write, and residents of villages distant from those to which either plaintiff or defendant belong; the age of the defendant, who is weak and decrepid from years, rendering it improbable that he would travel $2\frac{1}{2}$ coss to borrow money, when his sons who resided with him were the most proper parties to manage his pecuniary transactions; the conflicting testimony of the attesting witnesses; are all circumstances, the moonsiff observes, when combined, that throw discredit on plaintiff's claim, and he gives a verdict accordingly for the defendant.

In appeal, the plaintiff urges that the grounds for rejecting his claims are not valid, but assigns no good reason for his plea. The plaintiff rests his claim on the testimony of the attesting witnesses. Three of four are ignorant illiterate parties, who could not identify the bond if it were shown to them. Their evidence is so improbable as to be unworthy of credit. They swear to minute circumstances as having occurred on the 2nd Bhadro 1254, the date of the bond, but their memory fails them entirely as to matters in which they were concerned, which took place both immediately before and subsequent to the date of the bond.

There appears no reason to interfere with the judgment of the lower court, which is hereby affirmed, and the appeal is dismissed, without serving a notice on the respondent.

THE 31ST JANUARY 1850.

No. 181.

*Appeal from a decision of the Moonsiff of Pertabpore, Golam Soobhan,
dated 18th June 1849.*

Chuckerdhur Dulye, (Defendant,) Appellant,

versus

Teetoo Lall Baboo, (Plaintiff,) Respondent.

THIS is an action for a bond debt, rupees 31-11-2. The defendant denies, and pleads that plaintiff usurped a piece of lakhiraj land in possession of his (defendant's) son, and, to prevent defendant adopting legal measures to recover, has brought the present suit.

The moonsiff decrees for plaintiff, because, he observes, defendant denies, and he cannot prove a negative. The moonsiff's proceedings are informal and incomplete; the former, because he has omitted to record his judgment in the manner prescribed in Act XII. of 1843, and the latter, because he states the defendant's plea is a simple denial, which is in contradiction of his (defendant's) reply, wherein he distinctly sets forth that plaintiff has lakhiraj land, of which circumstance the moonsiff takes no notice, and records no opinion, whether it be true or false.

The appeal is accordingly admitted, and the case remanded to the moonsiff, who will review his judgment with reference to the foregoing remarks. The cost of stamps to be refunded.

ZILLAH MYMENSING.

PRESENT: R. E. CUNLIFFE, ESQ., JUDGE.

THE 8TH JANUARY 1850.

No. 4 of 1849.

Appeal from the decision of Pundit Nurhurry Seromonee Rai Bahadoor, Principal Sudder Ameen of Zillah Mymensing, dated the 8th February 1849.

Raja Kaseechunder Sing, (Defendant,) Appellant,

versus

Ruttun Muneo Dasea and others, (Plaintiffs,) Respondents.

RESPONDENTS sued to obtain possession of a talooq in the appellant's zemindaree in pergunnah Soosung, of which appellant and others had dispossessed them in Bhadoon 1251, under a sunnud granted by appellant, dated the 17th Bysack 1230 pergunnahitee.

Appellant denied having granted the talooq, and alleged that respondents and their ancestor held the mouzah merely in jumma; that the sunnud was a forgery, as it was dated the 17th Bysack 1228 Bengalee, though the stamp was purchased on the 30th Phalgun 1228; that he was at the time a minor, that he has no oval seal and had none during his minority, and the one he made when he became of age is a round one. He also alleged that a vukalutnamah purporting to bear his seal and signature filed in a former case is a forgery, and both the forged documents set forth by respondents' ancestor, Nundkishwur, his mookhtear gomashtah, and that Bindoo Byde and others, who knew Nundkishwur, had only charge of the mouzah, had been made defendants to prevent his having the benefit of their evidence, and respondents ought accordingly to be nonsuited. Respondents denied that Nundkishwur was mookhtear gomashtah, but only a mohurer on 3 rupees per mensem; and that disputes arising between them and one of the defendants in this case, regarding the boundary of this and another talooq, Raja Radakaunt and others, shareholders in the same zemindaree, had arbitrated the matter, and their right to the talooq was not questioned, that the pergunnahitee date of the sunnud is correct, though there is an error in the Bengalee era.

The principal sudder ameen decreed in favor of respondents, as their claim was established by the evidence of their witnesses, the

sunnud, the decisions in various regular and miscellaneous suits as detailed in his decision, and that the error in the Bengalee year was of little consequence, as the year current in the pergunnah is correctly entered in the sunnud.

In appeal, it was urged that respondents ought to have been nonsuited, for the reasons stated above; that the seal on the sunnud is not legible, but the words Kashee and Sing are so; that no dakhilas have been filed or proof of mutation of names in his serishtah; that the kubooleuts are forgeries; that respondents ought to have filed chittas, jumabundee papers, &c.; and that their witnesses are low persons and disagree, whereas his are respectable.

On the first point, whether the respondents should be nonsuited, I do not consider it necessary, because, although the respondents have included Bindoo Byde and many others without cause, the appellant has not distinctly stated who among the defendants were his witnesses, merely stating Bindoo Byde and others, and the evidence of that one person would not avail, while the court rejects the evidence of the eleven witnesses who have given evidence on his part. I see no reason to interfere with the decision of the principal sudder ameen. The respondents have filed decisions of the courts, which shew that their right to the talooq was long ago set forth, and in one of those cases the appellant filed a petition, supporting the respondents' claim and admitting their talooq. That petition, appellant alleges to have been filed by means of a forged vukalutnamah during his minority, but I do not consider his witnesses (the only evidence he adduced) worthy of credit, for they are low persons, servants and such like, except the three rajas, and one of them, who says he was in appellant's service in 1228 and 1229, states he had a seal, though a round one, at that time. The rajas' evidence I consider unworthy of credit, because they are connections of the appellant, and their denial of the talooq is opposed to the admission of their ancestors, Raja Radakunt and others, who arbitrated between respondents and others in 1238 B. E., which is at least two years after the appellant became of age, according to his own statement, for he says he was 10 or 11 in 1228, and he could scarcely have been ignorant of the dispute.

The appeal is dismissed, and the decision of the principal sudder ameen affirmed, with costs.

THE 12TH JANUARY 1850.

No. 5 of 1849.

Appeal from the decision of Pundit Nurhurry Seromonee Rai Bahadoor, Principal Sudder Ameen of Zillah Mymensing, dated the 5th February 1849.

Rajnarain Doss and others, (Defendants,) Appellants,

versus

Komullochun Ghose and others, (Plaintiffs,) Respondents.

RESPONDENTS sued to obtain possession of 6 arras and 3 pao in kharija talooq Indernarain Deb, which they had purchased on the 15th Chyte 1251, from Kadir Mahomed and others, who transferred to them several deeds of sale, under which they and their ancestors had purchased the above lands from the appellants and their ancestors.

The appellants denied the above sale, and stated that separate portions of the lands of the talooq could not be sold separately, as the talooq was in the joint possession of them and other shareholders, that Noor Mahomed and Chooloo, who are alleged to have purchased these lands from them were their ryots, and have for some years left the village and gone to Tharlee, and that when Khadir Mahomed and others sued Radakanth Kapalee in the moonsiff's court for rent, they were unable to produce the alleged kuballas. One of the defendants, Rogoonath Deb, admitted the sale of 1 arra 4 cottahs by his father, and Chooloo that of the lands claimed by the respondents.

The principal sudder ameen decreed in favor of respondents, as the deeds of sale to Arrafdee and others had been proved by the recognition of the writing of the witnesses who are dead, by their sons and others, and that the two kubooleuts of the 15th Maugh 1234, adduced by the appellants to prove that Arrafdee and Chooloo were their ryots, are not worthy of credit, as they are lately written on old paper, to which in some places the ink has not adhered, and though the witnesses to them say they were written by Kaseechand, Sheik Koodea, and Ramnath Ghose, respectable persons well acquainted with his writing deny that the writing is his, and that the talooq is not held in joint possession is proved by copies of the registered deed of sale of Rammohun Deb, one of the shareholders, dated the 13th Kartick 1251, and by the mutation of names in the collectorate.

In appeal, it was urged that the respondents' alleged kuballas have not been proved by a single witness, that Roghoonath Deb is mad and not in possession, and that the mutation of names in the collectorate, and the deed of sale of the 13th Kartick 1251, refer to the Usulee village and not to the parah in which these lands are situated. Although all the kuballas of the first purchasers have not

been proved by the evidence of witnesses, I consider the principal sudder ameen has come to a right decision on the matter, barring an error, which will be corrected hereafter.

The kuballa of the 28th Jeit 1228 has been attested by one of the witnesses to it, and the signature of another of the witnesses by his two sons, and some evidence has been adduced to prove the signature of some of the sellers, and witnesses of some of the other kuballas and to the signatures of two of the dakhillas. The evidence of the witnesses of the appellants I do not consider worthy of credit, as one part of it is decidedly false. They state the talooq to have been in joint possession, and no division of the land among the shareholders, whereas the mutation of names in the collectorate in 1244, and the copy of the registered deed of sale of the 13th Kartick 1251, prove that some of the shareholders have disposed of certain portions of land, and not shares of the talooq. Appellant urges that those documents have reference to the usulee village, and not to the parah, but it has nowhere been pleaded that the usulee village and its parah were held differently. The appellants state the sellers to the respondents were their ryots, and left the village in 1248, three years before respondents' purchase, but have failed to state what became of these lands after the ryots had left. The principal sudder ameen has, however, passed a decree for 8 cottahs, of which the respondents have filed no proof that their sellers had the right to dispose, accordingly the appeal is decreed, and the principal sudder ameen's decision amended, as regards the quantity of land decreed, which is reduced to 5 arrahs, 8 cottas, and 3 pao, with proportionate costs.

THE 12TH JANUARY 1850.

No. 7 of 1849.

Appeal from the decision of Pundit Nurhurry Seromanee Rai Bahadoor, Principal Sudder Ameen of Zillah Mymensing, dated the 13th February 1849.

Nubkaunth Sha and others, (Plaintiffs,) Appellants,

versus

Rajchunder Surma, (Defendant,) Respondent.

Jugutchunder Surma, Petitioner.

THE appellants sued the respondents for the amount of a bond for rupees 1,000, interest, and after having caused 1,200 belonging to the respondent in deposit in the collectorate to be attached, the respondent filed a petition, requesting the sum might be paid to appellants. In the meantime the petitioner filed a petition, claiming the money which had been attached, and the principal sudder ameen, after investigating the claim set up under Circular of the 26th November 1847, dismissed the appellants' claim; but as that

Circular had been cancelled by Circular No. 2, of the 2nd January 1849, before the date of the decision, the principal sudder ameen's decree, in conformity to the latter Circular and the precedent of Maharaja Hetnarain, petitioner, dated the 21st August 1848, published in the *Bengalee Government Gazette* of the 5th October 1848, must be reversed, and the sum claimed decreed, leaving the petitioner to bring forward any objections he may have to plead, when execution of the decree is taken out. Costs to be paid by respondent.

THE 14TH JANUARY 1850.

No. 11 of 1849.

Appeal from the decision of Pundit Nurhurry Seeromonee Rai Bahadoor, Principal Sudder Ameen of Zillah Mymensing, dated the 6th March 1849.

Nundmohun Chowdry, (Defendant,) Appellant,

versus

Luchmunpersad Misser, (Plaintiff,) Respondent.

RESPONDENT sued to recover rupees 488-8, on a bond dated the 17th Bhadoor 1252.

Defendant denied having borrowed the sum claimed from the respondent, but on the day stated he applied to Sebdeen Misser, respondent's uncle, for a loan of rupees 140, who only agreed to lend it on the appellant agreeing to give a bond, including rupees 135 illegal interest alleged to be due on former transactions, bonus, and illegal interest in advance on the present loan: his necessities obliged him to consent to, and he executed the bond, which is opposed to the provisions of Regulation XV. of 1793.

The principal sudder ameen decreed the sum claimed, as appellant had adduced no proofs of the defence set forth.

The objections urged in appeal are frivolous, viz. that his mookhtear had colluded with the respondent, and not caused the evidence of Goluckehunder Chuckerbuttee, mookhtear of both parties, and Puddumlochan Surma, one of the witnesses to the bond, to be taken. It appears that Goluckehunder acted for some time as mookhtear of the appellant in this case, and on his being taken ill appellant appointed another, who put in an istafah as regards that witness, and with regard to the other he did not take the necessary steps to cause his attendance; besides which, appellant does not state how he came to borrow so much a larger a sum than he applied for. The decision of the principal sudder ameen is affirmed, and the appeal dismissed, with costs.

THE 14TH JANUARY 1850.

No. 12 of 1849.

Appeal from the decision of Pundit Nurhurry Seeromonee Rai Bahadloor, Principal Sudder Ameen of Zillah Mymensing, dated the 5th March 1849.

Kalleechurn Sikdar and Radachurn Sikdar, (Plaintiffs,) Appellants,
versus
 Hurmunee Chowdrine, (Defendant,) Respondent.

APPELLANTS state that, on their accounts with the respondent being made up on the 18th Kartik 1253, rupees 1,131-14-12 was found to be due to them, of which respondent paid them rupees 131-14-12, and gave a kistbundee to pay rupees 100 monthly until the claim was liquidated, of which she paid rupees 350 through Mr. K. S. Brodie.

Respondent denied executing the kistbundee, and alleged it has been got up by her mother-in-law, Anund Moye Chowdrine, with whom she has disputes.

The principal sudder ameen dismissed the claim, not considering the appellants' witnesses worthy of credit, (who are all Anund Moye Chowdrine's omlah,) as they have stated much beyond the plaint, and on account of the discrepancies in their evidence; and after perusal of the evidence, I fully concur in the view the principal sudder ameen has taken of it.

In appeal, it was urged that respondent and Anund Moye Chowdrine lived in the same house, and had the same omlah, but of that no proof has been adduced, and that they could not cause the attendance of two of their witnesses, Hurkunth Sein, respondent's brother, and Mr. Brodie.

With regard to the first, the summons had been served upon him, but no further steps were taken to cause his attendance, and the excuse that the summons could not be served upon Mr. Brodie during the long time the suit was pending, I consider frivolous, as that gentleman, who lives only five miles from the court, is frequently in the station. The decision of the principal sudder ameen is affirmed, and the appeal dismissed, with costs.

THE 26TH JANUARY 1850.

No. 10 of 1849.

Appeal from the decision of Charles Mackay, Esq., late Principal Sudder Ameen of Zillah Mymensing, dated the 24th July 1847.

Hurchurn Sein and Rajchurn Sein, (Plaintiffs,) Appellants,
versus

Nowruttun Beebee and Raichand Sha, (Defendants,) Respondents.

APPELLANTS sued to obtain possession of 4 annas, kismut Durreapore, in talooks Hinganuggur and Murdur, &c., purchased by their father on the 28th Assar 1234, from Jaffer Allee Khan.

The respondent, Nowruttun Beebee, among other objections, alleged, the appellants were barred by lapse of time, eighteen or nineteen years having elapsed since the date of purchase, of which they had never obtained possession.

The principal sudder ameen, without noticing this point, records a long decision on the merits of the case.

On the 26th November 1846, proofs on this point were called for from both parties, and on the 19th December, there is a roboocaree stating that the period for instituting appears to have lapsed, and there is another of the 18th January 1847, which states that it not being clear whether the suit was within time or not, both parties had been called upon, and had filed certain documents, which are detailed, but no decision on the point is recorded. The decision of the principal sudder ameen is therefore reversed, and the suit remanded for decision in the first instance of that point; and should the suit not be barred by lapse of time, the principal sudder ameen will then decide it on its merits.

THE 26TH JANUARY 1850.

No. 13 of 1849.

Appeal from the decision of Pundit Nurhurry Seeromonee Rai Bahadoor, Principal Sudder Ameen of Zillah Mymensing, dated the 1st March 1849.

Sheik Fakeer Mahomed, Raja Budinath Sing, and others,
(Defendants,) Appellants,

versus

Sheik Shanoo and others, (Plaintiffs,) Respondents.

RESPONDENTS sued to obtain possession of 3 arras, the lakhiraj of Kaleenath Sirkar, in kismut Kooreah, in the 2 anna zemindaree of pergunnah Soosung, which they had purchased from that person on the 19th Assin 1252, and of which the appellants had dispossessed them, and of which the respondents had obtained sunnuds, confirming the lakhiraj from some of the shareholders.

The Sheik appellants replied that it was khirajee in the share of the rajas, appellants, who had granted them a talooq of the land in Maugh 1253, they having previously cultivated it as ryots. The rajas, appellants, also claimed it as khirajee, appertaining to their share of the zemindaree.

The principal sudder ameen decreed the claim, as the rajas had not filed any documents to shew that the land was in their share of the zemindaree, and the other larger shareholders had admitted that it was lakhiraj, and because the appellants' witnesses were low persons.

In appeal, it was urged that no proof of its being lakhiraj had been adduced, that it was in the rajas' (appellants') zemindaree, and no reason assigned why their witnesses are not respectable persons.

The decision of the principal sudder ameen as regards possession must be affirmed, but without deciding upon the validity or otherwise of the alleged lakhiraj; for I consider the possession of the respondents and their seller much better established than that of the Sheik appellants, and the only proof adduced by the rajas, appellants, that the land is khirajee, and in their share of the zemindaree, is the evidence of two peadas, and they have not even stated what is the rajas' share, and when and how separated. The appeal is dismissed, with costs.

ZILLAH NUDDEA.

PRESENT: J. C. BROWN, ESQ., JUDGE.

THE 29TH JANUARY 1850.

No. 71 of 1849.

Regular Appeal from a decision passed by Baboo Heeraloll Mitter, Moonsiff stationed at Goburdangah, on the 19th July 1849.

Poorun Chunder Mookerjee, (Plaintiff,) Appellant,

versu.

Gujjoo Surdar and others, (Defendants,) Respondents.

THIS appeal was admitted after a perusal of the record of the moonsiff's proceedings, and notifications were issued for the attendance of the respondents. As they were not, however, found, a proclamation was issued in the usual manner for their appearance. The time fixed for their responding to the appeal has elapsed, and they have not yet appeared, and the case has been proceeded with *ex parte*.

The moonsiff rejected the plaintiff's claim, because he did not believe the evidence of the witnesses, but the reasons he has given for not admitting their testimony are frivolous and unsatisfactory. In my opinion the plaintiff's (appellant's) claim is clearly proved by the evidence of his witnesses; and his own deposition taken down this day before me, and the non-attendance of the respondents, although duly summoned, are corroborative of the above evidence. Under the above circumstances,

IT IS ORDERED,

That the appeal is decreed in favor of the appellant, with full costs, and the moonsiff's decree is reversed.

The plaintiff (appellant) is to receive from the defendants (respondents) the amount due on the bond, with the interest, at the rate of 12 per cent. per annum, from the date of it to this day, and all his costs, and from to-morrow he is to receive interest on the full amount of this decree, up to the day on which the same is fully executed, at the rate of 12 per cent. per annum.

THE 29TH JANUARY 1850.

No. 75 of 1849.

Regular Appeal from a decision passed by Mahomed Waffee, Moonsiff stationed at Punghutta, on the 26th July 1849.

Anund Ghose, (Defendant,) Appellant,

versus

Rampurshad Dey, (Plaintiff,) Respondent.

THIS suit was brought by the plaintiff, to recover the sum of 60 rupees, damages done by the defendant's cattle to his mulberry plants and silk-worms.

The defendant denied the extent of damage done, but admits that a cow of his accidentally injured a few mulberry plants, and that an investigation was immediately made by the gomastah of the village, and the amount of damages he assessed and awarded was 1 rupee.

The moonsiff, although he does not give full credit to the plaintiff's witnesses, yet considered that a moiety of the amount sued for as damages was due to the plaintiff, and decreed accordingly 30 rupees.

From this decision the defendant has appealed.

After an attentive perusal of the evidence, the only proof I can find recorded is the admission of the appellant that his cow did commit a slight trespass, and from the evidence of Ramcoomar Mundul and Ramjai Dey, it is clear that the damage done was of so trifling a nature that the gomastah of the village assessed it at 1 rupee. The plaintiff's story of the cow having for five successive days destroyed nearly a beegah of plant, is incredible, as it was the plaintiff's own fault, if he allowed such damage to be done for five days. I consider the suit to have been instituted from vindictive and revengeful motives, and that the plaintiff is not entitled to receive more than the damage done to his property as originally assessed at, and without costs, as he would not abide by the gomastah's award.

ORDERED,

That the appeal is decreed for 29 rupees and all the costs, and the moonsiff's decree is reversed.

The appellant is to pay the respondent 1 rupee, and the respondent is to pay the whole of the costs of courts to the appellant, with interest at the rate of 12 per cent. per annum from this day.

THE 30TH JANUARY 1850.

No. 85 of 1849.

*Regular Appeal from a decision passed by Ram Comal Rai Chowdhury,
Acting Moonsiff of Meherpore, on the 27th July 1849.*

Aluff Khan and Bheelo Khan, (Defendants,) Appellants,

versus

Shukbut Biswas, (Plaintiff,) Respondent.

THIS appeal is made by the appellants from an *ex parte* decree passed against them and three other individuals, not on the grounds of their having been ignorant of the suit which was pending against them, but that they were in confinement in the zillah jail on a criminal charge. The three remaining defendants who were at large gave no answer, nor offered any opposition to the demand made against them all collectively, nor have they appealed.

The question, therefore is, if, under the provisions of Circular Letter of the Sudder Dewanny Adawlut, dated the 12th March 1841, this appeal is admissible or not.

The wording of the order referred to is, "should it appear that the party appealing has had due notice served upon him by the court of original jurisdiction, and that the reasons of default are frivolous or groundless, in such case the appeal should be dismissed."

In this case the appellants do not plead ignorance of the suit having been pending against them, but only that they were in prison. They had it in their power to petition this court (in the same way as they filed this appeal,) and they could have employed a vakeel to defend them in the moonsiff's court; and with this view of the case, I consider the reasons for default given by them frivolous. And their appeal I consider groundless, as the remaining three individuals implicated in the same suit neither offered any objections in the court of primary jurisdiction, nor have they appealed from the decision given against them.

The moonsiff has decided the case agreeably to the rules of practice and to the regulations of Government, and I see no good grounds for admission of the appeal. In conformity with the provisions of Clause 3, Section 16, of Regulation V. of 1831, nothing is therefore required, but to reject the appeal, and give intimation to the moonsiff.

IT IS THEREFORE ORDERED,

That this appeal is dismissed, and the moonsiff's decision is confirmed, and, agreeably to the enactment above quoted, intimation is to be sent to the moonsiff at Meherpore.

THE 30TH JANUARY 1850.

No. 5 of 1850.

Regular Appeal from a decision passed by Lukheenarain Mitter, Moonsiff of Kaghuzpookhureah, on the 12th December 1849.

Gopal Ghose, (Defendant,) Appellant,

versus

Niamut Mundul, (Plaintiff,) Respondent.

ST IR for the reversal of a decree passed by the revenue authorities under Regulation V. of 1812.

The appellant in the first instance distrained the respondent's property for the sum of 24 rupees, 7 annas, 2 gundahs, 2 cowrees, and the respondent brought his suit for contesting the demand before the deputy collector, who dismissed it. He in consequence had recourse to the civil court, in which he repudiated a kubooleut exhibited by the appellant, as well as the statement made by him that in the years 1251 and 1252 B. A.E. he had paid 14 and 3 rupees respectively.

The appellant filed the kubooleut, which he alleged the respondent had executed, and summoned four out of the five witnesses who had subscribed their names on it, the fifth being dead. The reasons given by the moonsiff for **not** admitting the kubooleut are satisfactory, namely, that the witnesses, not knowing how to read or write, cannot swear to the document, also that they do not reside near where the parties to this suit live, but at a distance of 8 or 10 miles, and **no** good or sufficient reason has been shown why persons who resided near them did not witness the kubooleut.

The moonsiff instituted a local investigation regarding the quantity of land and when the respondent had it in cultivation, but the witnesses gave conflicting evidence and could not speak with any certainty on the points at issue between the parties. Under these circumstances the moonsiff very properly gave a decree in favor of the respondents, and reversed the decision of the deputy collector.

After duly considering the allegations of both parties and the evidence of the witnesses as recorded, I am of opinion that the decision of the moonsiff is just and legal, there is not therefore, under the provisions of Clause 3, Section 16, Regulation V. of 1831, any occasion to summon the respondent. And

IT IS ACCORDINGLY ORDERED,

That the appeal is rejected, and the moonsiff's decision confirmed, of which intimation is to be sent to him as provided for in the enactment just quoted.

THE 31ST JANUARY 1850.

No. 89 of 1849.

*Regular Appeal from a decision passed by Baboo Gungachurn Sircar,
Moonsiff stationed at Hanskhalee, on the 8th August 1849.*

Bukhtawur Turrufilar, (Defendant,) Appellant,

versus

Muheish Chundur Rai, (Plaintiff,) Respondent.

I AM not satisfied with the evidence on which the moonsiff has decreed this suit. The defendant (appellant) has from the beginning petitioned that the plaintiff's account-books might be sent for; and two days before the moonsiff decided the case, he again petitioned that the plaintiff's account-books might be sent for and examined, and that the plaintiff might be made to swear to the truth of his claim. The witnesses, on whose evidence the moonsiff has given the plaintiff a decree, disagree regarding the account-book, which was referred to at the time the bond was drawn out. One says it was bound with khurwah, and the other that it was a kaunphorah, or loose leaves stitched together in its corner.

The moonsiff, in his decision, has not referred to the defendant's wish to have the books examined, but has only referred to the defendant's wish to have the plaintiff sworn.

I do not consider the two witnesses' depositions sufficiently consistent, nor the men themselves so respectable or credible that on their evidence alone the suit be decreed to the plaintiff; and I am of opinion the moonsiff should have examined the plaintiff on his oath and sent for his books, without which I do not consider the decree perfect.

Therefore, as provided for in Clause 2, Section 2, Regulation IX. of 1831,

IT IS ORDERED,

That this suit be returned to the moonsiff's file, and that, with reference to the above remarks, he is to institute further investigations into the merits of the case, and then pass a legal order. The value of the stamp paper is to be returned to the appellant.

THE 31ST JANUARY 1850.

No. 92 of 1849.

*Regular Appeal from a decision passed by Syed Sukhawut Hossein, Moon-
siff of Kishnaghur, passed on the 27th August 1849.*

Issur Chunder Ghose, (Defendant,) Appellant,

versus

Phunnee Shaikh, (Plaintiff,) Respondent.

THE appellant in the first instance distrained the respondent's property for arrears of rent. The respondent, under the provisions

of Regulation V. of 1812, brought this suit to contest the attachment, and pleaded not cultivating.

The moonsiff has, for the reasons detailed in his decision, not considered the kubooleut filed by the appellant proved, and repeatedly required the appellant to prove the fact of possession by witnesses, and by deputing an ameen to make local investigations.

The appellant's vakeel, on the 18th of August 1849, deliberately refused to give any more proof, and requested that judgment might be passed on the merits of the case as it stood.

In the petition of appeal, the appellant has stated his readiness to furnish further proof now, but I do not consider him entitled to the indulgence, as he refused to comply with the moonsiff's requisition.

The moonsiff's decree is, in my opinion, quite just and proper. There is not therefore any occasion, as provided for in Clause 3, Section 16, Regulation V. of 1831, to summon the respondent.

ORDERED,

That the appeal is dismissed, and the moonsiff's decree confirmed, of which intimation is to be sent to him.

ZILLAH PATNA.

PRESENT : R. J. LOUGHNAN, ESQ., JUDGE.

THE 23RD JANUARY 1850.

No. 3 of 1849.

Appeal from a decision passed by Mr. E. DuCosta, first grade Principal Sudder Ameen, on the 26th December 1848.

Jumalooddeen, (Plaintiff,) Appellant,

versus

Salamut Alli *alias* Dumree and others, (Defendants,) Respondents.

SUIT laid at Company's rupees 513-7-9, for possession of certain lands alleged to belong to plaintiff's estate, mouzah Gyaspore, and to have been taken possession of by defendants, who own the contiguous mouzah Mooschpore Hatar.

The principal sudder ameen, after deputing two ameens to ascertain the boundary, contiguous to which are the disputed lands, the report of the second of whom contradicted that of the ameen first sent, went himself to the spot. There, he says, plaintiff was unable to point out more than five parcels out of twenty-five, alleged to have been usurped by the defendants, and of this one he admitted was in his own possession. The principal sudder ameen further says, that he was unable to exhibit any satisfactory proof that even the four parcels claimed belonged to his estate, and even had failed to give any specific definition of field or boundary marks, and therefore and because the whole rukba of Mooschpore measured by the ameens fell short of the rukba recorded in the collector's office in a greater degree than that of Gyaspore, plaintiff's village, he dismissed the suit, with costs.

Appellant states, first, that from the maps made by the ameens at the recent settlement of both mouzahs, which were among the records of the case, it was quite possible to define the boundary between the two mouzahs, and to decide what parcels of the disputed lands belonged to one, and what to the other mouzah, and were included in the rukba at the settlement. Secondly.—That plaintiff had designated the boundary and the situation of the lands in dispute most clearly. Thirdly.—That it is true plaintiff was unable to point out the lands piece by piece. This, defendants had rendered it impossible for him to do, by obliterating the subdivisions and making one field of many, but that he had pointed out the land

which he claimed on the spot to the principal sudder ameen. Fourthly.—That appellant did exhibit satisfactory proof in the maps, survey papers, (khusra,) and evidence of witnesses, that the land claimed had been usurped by the defendants, subsequent to the settlement of both mouzahs.

The decision appears to me imperfect, because it does not specify the evidence which plaintiff adduced to substantiate his claim, and which the principal sudder ameen considers insufficient to substantiate it. If the insufficiency of the evidence arose from the want of a clear specification of the limits or an accurate description of the lands claimed, in consequence of which it was impossible for the principal sudder ameen to discover on the spot what lands were intended to be designated in the plaint, that circumstance, if plaintiff was unable to give any satisfactory explanation, might have constituted ground for a nonsuit, but not for dismissing the suit altogether. I therefore decree the appeal, and remand the case to the lower court, in order that the principal sudder ameen, after calling on the plaintiff for, should it be deemed necessary, a further and more definite description of the situation and limits of the land in dispute, such as may enable the court to identify it, (and in doing this it will be by no means necessary that he should show the limits of every one of the twenty-five parcels of land composing the plot or plots of ground claimed,) may re-consider the proofs and evidence adduced by the plaintiffs and defendants, and decide the case again. It should be observed also, that an ameen should not be deputed by the court of its own motion for such a purpose as to ascertain whether the lands had been assessed as belonging to one mouzah or the other, which is the whole subject under debate, although it might be quite proper to depute one to make a plan of the disputed and adjacent lands, shewing the shape, dimensions, and situation of the former, with a view to enable the court to trace them in the maps and surveys of the settlement officers and ameens. The decision is reversed accordingly, and the case remanded. The value of the stamp of appeal will be returned.

ZILLAH PURNEA. *

PRESENT: D. PRINGLE, Esq., JUDGE.

THE 17TH JANUARY, 1850.

Appeal No. 21 of 1848.

Principal Sudder Ameen, Moulree Rooknooddeen.

Doolarchund, (Plaintiff,) Appellant,

versus.

Musst. Suropa Beebee, Munnee Lal, Neamutooleh and others,
(Defendants,) Respondents.

Vakeels for Appellant—Seetulchunder and Bamachurn.

Vakeel for Respondents—Munneerooddeen.

ACTION for possession and mesne profits of gutch Soontee Kunta, laid at rupees 1,456-9-6. The appellant (plaintiff below) claimed to hold the said gutch on a pottah obtained from Munnee Lal, grandson and agent of Suropa Beebee, dated the 28th Falgoon 1253; now in occupation of Neamutooleh and others. Munnee Lal making no answer, whose authority to grant such lease, Suropa Beebee disclaims, recognizing the title of Neamutooleh and the others, who plead prescriptive occupancy, but that their pottah obtained from the late husband of the co-defendant was destroyed by fire. On which grounds the principal sudder ameen dismisses the claim, holding the adverse possession of the co-defendants, for many years antecedent to be established, and therefore not liable to be so disturbed, even admitting the pottah produced by the appellants to be authentic, but which, it is seen, Suropa Beebee disclaims. In appeal, it is urged, that Munnee Lal and Suropa Beebee are co-proprietors of the istemraree, being so declared by an award obtained against them jointly; the former invariably acting for the latter; which decree appellant exhibits.

JUDGMENT.

There is here to be ascertained, the title and authority of the respondent, Munnee Lal, who granted this pottah to appellant in his own name and that of Suropa Beebee. The decree produced by the appellant establishes a joint interest; and admitting Munnee Lal

had no authority from the co-proprietors, the appellant would yet have his remedy against him, though there is every presumption in favor of such existing, Suropa Beebee being a widow, and Munnee Lal, her grandson. The suit is therefore remanded that the liability of the parties, whose names appear as lessors, jointly or severally, be determined.

THE 17TH JANUARY 1850.

Appeal No. 29 of 1848.

Sudder Ameen, Mr. Noney.

Sheikh Deedar Hossein, (Plaintiff,) Appellant,

versus

Syed Enayeut Hossein and others, (Defendants,) Respondents.

Vakeel for Appellant—Fuqueeralal.

Vakeels for Respondents—Munneeroodeen and Seetulchunder.

CLAIM to credit of rupees 521-8, in payment of rent, as is thus stated by the sudder ameen. The plaintiff states, in the month of Bysak 1254, he took a lease of Mysakhore, in pergunnah Soorjapore, from the zumindars, by virtue of a durkhast, at an annual jummah of rupees 3,063-15; that Koorban Allee and Kasim Allee came to him and demanded 550 rupees for Ahmed Riza, saying, the same would be credited as rent at the time of the poonnecah; that he gave 550 rupees to Koorban Allee and Kasim Allee, on the 21st Jeyte 1254, and subsequently obtained a pottah from the amil; that owing to his not getting credit in rent, he sues to recover rupees 621-8, with interest. Defendants deny having received the amount. Plaintiff has no proofs in support of his claim, only copy of a chellan and the evidence of three witnesses, but this is not sufficient, plaintiff was himself in Kishengunge, and instead of delivering the money in person, how did he trust so heavy a sum to be sent without any receipt or order from the zumindar? The plaintiff has no document; in the absence of which, oral evidence alone is not sufficient to prove the payment. I therefore dismiss the claim, with full costs.

In appeal, the evidence as to payment of the amount for which credit is claimed, is again cited as sufficient.

JUDGMENT.

The duplicate chellan produced, is no voucher of such payment; to which there is no evidence, as stated by the sudder ameen, that it should be admitted. The appeal is therefore dismissed.

THE 17TH JANUARY 1850.

Appeal No. 26 of 1848,

Sudder Ameen, Mr. Noney.

Oomrao Rae and Ramsoondur Mehtoo, representative of Koonjul Lal, deceased, (Plaintiff,) Appellant,

versus

Hoolas Rae, (Defendant,) Respondent.

Vakeel for Appellant—Fuqueeralal.

Vakeel for Respondent—Bamachurn.

FOR recovery of rupees 938, value of kelai crop. The respondent (plaintiff) brought this action for value of crop grown in 200 beegahs of land, of which 45 beegahs was destroyed, and the produce of 155 beegahs forcibly removed by the appellants; being held by him on a lease of the lakherajdar, Fukeernoon Nissa Begum; a third party appearing as claimant to 63 beegahs of the same, as in the zamin-daree of Maharaja Roodur Sing. The appellants there pleading not guilty; when evidence was taken in support of respondent's allegations, and an ameen finally deputed to make local enquiry, as to the extent of land and damage sustained; who reported that 155 beegahs was thus shewn to have been sown with kelai by respondent; of the produce of which the appellants had forcibly possessed themselves. On this report, as corroborated by the evidence, the sudder ameen made award for rupees 641, being two-thirds of the damages claimed, considering the amount as laid by respondent to be excessive. In appeal, the same objections are revived, the land it is stated unsuitable for such crop; while the evidence of the witnesses, it is contended, does not support the averment; the report of the ameen, being in like manner impugned, as opposed to fact and inconclusive

JUDGMENT.

This is a question of fact, and must be determined on the evidence and local investigation. To this the enquiry of the sudder ameen has properly been confined, and I see no reason to interfere with the decision; the claim to rent being a distinct question and not before the court.

THE 17TH JANUARY 1850.

Appeal No. 19 of 1848.

Principal Sudder Ameen, Moulvee Rooknooddeen.

Rammohun Chowdry, (Defendant,) Appellant,

versus

Rannarain Chowdry, (Plaintiff,) Respondent.

Vakeels for Appellant—Sectul Chunder and Bamachurn.

Vakeel for Respondent—Fuqueeralal.

SUIT for possession and recovery of mesne profits, laid at rupees 2,163. This case was gone into at great length in appeal, the recital

of which here, as the judgment of the lower court was only interfered with on a single ground, may be dispensed with, being set forth in the judgment below recorded.

JUDGMENT.

The principal sudder ameen has given a decree in respondent's favor for possession of 65 beegahs, 2 cottahs, 11 dhoors, with mesne proceeds, against which various objections are raised in appeal. Of these only one seems conclusive, namely, that, in a suit for rent, on the part of the farmer against respondent, the latter is said to cultivate 216 beegahs, 5 cottahs of land, but by the decision of the moonsiff this is awarded on 87 beegahs, 18 cottahs only, as found in occupation of the respondent. Whose plea, therefore, that he was dispossessed of 164 beegahs, 2 cottahs, is inadmissible. The whole land amounts, it is seen, to 251 beegahs, 2 cottahs, of which a moiety, the share of appellant, is 125 beegahs, 11 cottahs; and if 87 beegahs, 18 cottahs of which, according to the moonsiff's award, respondent was in possession, be deducted from the remaining moiety, his share there is left 37 beegahs, 13 cottahs, of which he was dispossessed, not 65 beegahs, 2 cottahs, 11 dhoors as declared by the principal sudder ameen's judgment, which is therefore to this extent modified in appeal; the amount of wasilaut to be determined by an ameen appointed for this purpose, when execution sued out.

THE 21ST JANUARY 1850.

Appeal No. 27 of 1848.

Principal Sudder Ameen, Moolree Rooknooddeen.

Mooktadur Khan, (Plaintiff,) Appellant,

versus

Musst. Harriet and Sheikh Peer Buksh, (Defendants,) Respondents.

Vakeel for Appellant—Mirza Ahmud.

SUIT for rupees 132-1, costs of defendant, relieved in original suit, made payable by appellant in the lower court. The action there, being against the female respondent and co-defendant, for injunction to stay payment of a sum deposited in the collector's office, in name of her deceased husband, as applied for in virtue of a certificate granted her under Act XX. of 1841; the co-defendant on opposition of appellant here, becoming her security, who was therefore included by appellant in his suit; and being relieved, as stated by the principal sudder ameen, his costs were to be borne by appellant. The question to be determined is, whether the surety was properly or improperly included by appellant. It is here contended that the security proffered, was declared inadequate by the nazir, therefore he was improperly made a defendant.

JUDGMENT.

If the return of the nazir as to the inadequacy of the security of the co-defendant (respondent) had been given in, before the institution of the regular suit by the plaintiff (appellant,) and the said co-defendant included, notwithstanding the plaintiff would undoubtedly have charged with his costs. But seeing the enquiry into this was then in abeyance, the plaintiff (appellant) must of necessity include the security elect, though the latter's costs should be borne by the co-defendant, to whom they will be charged accordingly, as also those of the appeal, and the appellant here relieved.

THE 22ND JANUARY 1850.

Appeal No. 34 of 1848.

Sudder Ameen, Mr. Noney.

Lala Chumun Lal, (Defendant,) Appellant,

versus

Rujubali Khan and others, (Plaintiffs,) Respondents.

Vakeel for Appellant—Bamachurn.

Vakeel for Respondents—Munneeroodeen.

FOR possession and mesne profits on a deed of sale; laid at rupees 660-8. The case is thus reported in his judgment by the sudder ameen:—"The plaintiff states that, on the 11th Bysak 1255, the first five defendants received from him 173 rupees, earnest money, on condition that they would sell to him 200 beegahs of nilik land in mouzah Bhutoreeah, pergunnah Huvelee; that on the 15th Assar, the deed of sale was executed for 200 beegahs of land, valued 600 rupees, notwithstanding they on the 27th July 1847, or 12th Sawun 1255, sold the same land to Chumun Lal, by a deed of sale duly registered; sues to recover possession by virtue of the first deed of sale, laying the claim at 660 rupees, 8 annas. Nujjuf Allee and Fuzund Allee acknowledge the sale of the land to plaintiff, the others denying it. I am to try the validity or otherwise of the first and second deeds of sale. From the record it appears, plaintiff's deed of sale is dated 15th Assar 1255, and the receipt or becananama 11th Bysak 1855, and Chumun Lal's deed of sale is dated 27th July 1247, or 12th Sawun 1255, thus the plaintiff's deed of sale and becananama is prior to that of Chumun Lal's, the earnest money from plaintiff and the execution of the deed of sale, being clearly proved; the sale therefore to Chumun Lal becomes invalid. Further, Nujjuf Allee and Fuzund Allee do not deny the becananama and deed of sale to plaintiff. I therefore uphold plaintiff's purchase and accordingly order, that this case be decreed, and plaintiff put in possession of 200 beegahs of land in mouzah Bhutoreeah, with 200 rupees wasseelat, and as Chumun Lal is not in fault, the

vendors will make good his costs, as well as those of plaintiff, with wassilat and interest from time of possession."

JUDGMENT.

The first of these deeds produced by respondent (plaintiff) below, has not been registered; while that of the appellants, as argued in their appeal, is duly registered. It is seen, however, that the latter is otherwise invalid, so that the question of validity so conveyed, need not here be determined. To the transfer under appellant's deed, we find Suhawut Allee, with a sister, possessing a joint interest in the land so conveyed, are made parties as vendors; by whom, however, this is jointly disclaimed, on the plea, that they were then minors, and no such authority to dispose of their shares, it is averred, being vested in the co-parceners. Which shares not being included in respondent's bill of sale as now duly authenticated, and the conditions of the beeananama proved to be fulfilled, it must be affirmed, and the appeal here dismissed.

THE 22ND JANUARY 1850.

Appeal No. 37 of 1848.

Sudder Ameen, Mr. Noney.

Baboo Nundun Jha and others, (Defendants,) Appellants,

versus

Mohunt Ram Surn Das, (Plaintiff,) Respondent.

Takeel for Appellant—Bamachurn.

Takeel for Respondent—Munnacerodeen.

CLAIM for rupees 509-10-11, due on a bond. Which is thus stated by the sudder ameen:—"The plaintiff sues the heirs of Roocheedut Jha, deceased, to recover rupees 509-10-11, principal and interest, due on a bond for 250 Sicca rupees, dated the 21st Joyte 1248. Roocheedut acknowledges the bond, and pleads payment of 150 rupees to plaintiff through Gopee Jha, plaintiff's brother; the rest of the defendants plead, they have not inherited Roocheedut's property, as they have always lived separate, &c. Bholanath, Eknath and others plead separation, and say plaintiff's claim against them is illegal; Roocheedut pleads payment of 150 rupees to Gopee Jha, plaintiff's brother; that Roocheedut Jha's property was divided between all the defendants. From the evidence adduced by plaintiff and defendant's answer, it is apparent that Roocheedut Jha's business was carried on jointly with defendants, and the property divided after his death; that the immovable property has not yet been divided; the defendants are therefore liable to plaintiff for the debt. Roocheedut pleads payment of 150 rupees to Gopee Jha, but in the absence of documentary evidence, that of three witnesses is not sufficient to prove this, which is likewise denied by plaintiff."

In appeal, it is argued that the co-defendants should not have been so made parties to this suit by the respondent, as the entire property devolved to the widow, on the death of her husband, who, moreover, confessed judgment in the lower court; no bywusteh being there called for, though imperative in such case to do so; that appellants would thus have been declared entitled to a release, and the costs charged to the widow, who is alone liable with her son, a minor, for her husband's debts, not appellants, his surviving brothers, who are not his representatives, and were no parties to the obligation, which the property left, moreover, would have covered amply.

JUDGMENT.

On inspection of the bond on which this action proceeds, there is no trace of its being jointly entered into by the brothers, so that the appellants are entitled to be relieved; in whose favor a decree is therefore made; their costs to be borne by the plaintiff (respondent,) who thus improperly included them in his action.

THE 23RD JANUARY 1850.

Appeal No. 36 of 1848.

Sudder Ameen, Mr. Noney.

Raja Ramkoonur, (Defendant,) Appellant,

versus

Hunoman Mundul, (Plaintiff,) Respondent.

Takeel for Appellant—Munceroodeen.

ACTION for damages for illegal distraint, laid at 412 rupees, thus stated by the sudder ameen:—"The plaintiff sues to recover 412 rupees, value of 8 buffaloes and milk, illegally distrained and sold under Regulation V. of 1812. Kaseenath and others say the buffaloes were sold for arrears of revenue. Raja Ramkoonur for himself and Ramnarain, pleads, that plaintiffs are jotedars in his putnee talook in moujah Rajasuree, of 51 beegahs, 13 cottahs of land, at a jumma of 65 rupees; that for 8 annas kist due for 1254, he attached and sold plaintiff's buffaloes for 35 rupees, 13 annas. The plaintiffs deny having any such land in their cultivation.

Raja Ramkoonur does not deny the sale of the buffaloes, but pleads they were attached and sold for arrears of revenue due for 1254, by the commissioner, but he has no document to show plaintiff's jotedaree in moujah Rajasuree. Moreover, from the enquiry of the ameen made on the spot, in which the evidence of the inhabitants of Rajasuree is taken, it is clearly shown that plaintiff had no land in cultivation there. Thus the pleas of defendant are inadmissible and the sale illegal. Plaintiffs have valued the buffaloes at 22 rupees each, but in their complaint in the foujdarry court, they

valued 11 heads at 92 rupees, or rupees 8-5-10 each; the plaintiffs are therefore entitled to rupees 66-14-6, and the same amount of damages, aggregating rupees 133-13, from Raja Ramkoonur, principal defendant, but not to value of milk."

In appeal, it is contended that respondent was a pyekasht ryot in mouzah Rajasree, appellant's putnee, against whom the usual process had issued for balance of rent in arrears, who, however, proffered no security to stay the sale and contest the demand, but proceeds to bring a charge of theft against the party employed in such duty, which was dismissed by the deputy magistrate. The 8 buffaloes being now sold for 35 rupees, 13 annas, when respondent again brought a complaint before the magistrate, of this being forcibly carried out, which was as before thrown out. And as to that stated, of respondents not cultivating there, appellant's witnesses establish it, also the village papers and receipts of produce shared by respondent with the buttyedars; the cattle being likewise greatly over valued, so prays for a fresh local enquiry.

JUDGMENT.

The real matter at issue here, has not been fully ascertained by examination of the putwarry, a witness in the lower court, to whom a few common place questions merely are there put; namely, if respondent cultivated these lands for three years, what payments had been made on account of rent in this interval, and whether, at the time of the attachment, any wasil-baukee statement was served, in which these are exhibited as the law demands; of which no proof has been required; the attachment being otherwise invalid. The case is therefore remanded, that these points be duly investigated, and judgment then pronounced.

THE 24TH JANUARY 1850.

Appeal No. 30 of 1848.

Sudder Ameen, Mr. Noney.

Muhunt Ramshurn Dass, (Defendant,) Appellant,

versus

Dergopal Chowdry, (Plaintiff,) Respondent.

• *Vakeel for Appellant—Seetul Chunder.*

Vakeel for Respondent—Brijlall.

CLAIM for rupees 553-13, value of paddy crop forcibly removed by appellant (defendant;) respondent stating, that he held under appellant's lease 51 beegahs, 5 cottahs of land in mouzah Owrahee for seven years, or from 1248 to 1254; occupying the same up to 1253, when he had cultivated 30 beegahs in paddy, 21 beegahs, 5 cottahs being cultivated by ryots; when the produce of the former was forcibly cut and carried off by the defendant and others. In

reply, the defendant pleads not guilty: but admits taking the land into his own hands from 1254.

The sudder ameen finds, that although the defendant denies taking possession of the crop in 1253, this is clearly established by evidence adduced; who it is seen admits taking land in 1254, that is, before expiry of respondent's lease, in whose favor a decree is therefore given, with abatement on damages claimed, as being excessive.

JUDGMENT.

The respondent's vakeel being here asked, if the receipt for the amount of the summary decree obtained against him by appellant, as referred to in his pleadings, was forthcoming, replied that it was, and could be produced. As no decision can be arrived at, as to the legal exercise of the right, so to cancel respondent's lease here claimed by appellant, until the receipt in satisfaction of the summary decree with interest, be produced, the case is remanded, in order that respondent may have opportunity to bring forward this in refutation of the appellant's plea.

THE 25TH JANUARY 1850.

Suit No. 32 of 1849.

Mussumaut Surbesseree, widow of Salamat Rae and guardian of
Sekhraj Rae, Plaintiff,

versus

R. Cruise, Defendant.

Vakeels for Plaintiff—Munceroodeen and Mahboob Lal.

CLAIM for rupees 27,712-8, due on a bond. The plaint sets forth that, on the 19th November 1847, or 4th Aughun 1255, the defendant borrowed the sum of rupees 22,500, on a bond, bearing interest at 12 per cent. per annum, to be repaid in May 1848, being for the purpose of carrying on the indigo concern in pergunnah chuck Deloury, and other purposes, which bond, being duly attested, was afterwards registered, as now produced; but of which no part being yet paid, though the defendant has been repeatedly applied to, and who is now understood to be alienating his property, this action is brought to recover the amount, principal and interest, as thus due. On issue of the usual notice the defendant could not be found. The customary proclamation was then affixed at his place of residence, when no one appearing to defend the suit, it was decided *ex parte*, as shown in my judgment that follows.

JUDGMENT.

The above case having this day come to a hearing, it is found that the execution of this bond by the defendant is duly proved by the subscribing witnesses; and though undefended, yet from a

notice in the form of a letter, bearing defendant's signature, and served on the plaintiff's gomastah by his mokhtar, on the attachment of his indigo, &c., under Regulation II. of 1806, there can remain no doubt of the defendant's knowledge of this suit being instituted; whose silence therefore, can only be construed into a confession of judgment. On which grounds a decree for the amount so claimed, with interest up to the date of payment, and all costs is hereby made in favor of the plaintiff.

THE 25TH JANUARY 1850.

Appeal No. 6 of 1850.

Officiating Moonsiff of Kishengunge, Imamool Huq.

Sheikh Gholam Mahomud, (Plaintiff,) Appellant,

versus .

Sheik Nauca and others, (Defendants,) Respondents.

Vakeel for Appellant—Seetulchunder.

ACTION on a bond for rupees 24-8, dated 22nd Jyete 1253. The appellant's suit was dismissed by the moonsiff, because of the subscribing witnesses to the bond not being of the same village. It appears, however, that this was taken on adjustment of accounts between the parties, the appellant, who is a mahajun, citing his books in support of the claim; the case is remanded that he be allowed to produce these, and judgment then delivered.

THE 31ST JANUARY 1850.

Appeal No. 32 of 1848.

Sudder Ameen, Mr. Noney.

Kulcan Das, (Defendant,) Appellant,

versus

Choonee Sahoo, (Plaintiff,) Respondent.

Vakeel for Appellant—Fuqueera'al.

Vakeel for Respondent—Gobindchund.

CLAIM for rupees 22,6-10, value of sweetmeats. The respondent, plaintiff below, brought this action to recover value of sweetmeats supplied to appellants, through two others, there included as co-defendants, who deny receiving these, but the delivery being satisfactorily established, the claim is decreed by the sudder ameen; the co-defendants as above, being relieved. In appeal, the evidence to this is impugned as before.

JUDGMENT.

The fact of the receipt of the sweetmeats being established by the evidence, and the entries in the respondent's books, the plea of the appellant is dismissed; as already shewn in the preceding number.

THE 31ST JANUARY 1850.

Appeal No. 20 of 1848.

Principal Sudder Ameen, Moulvee Rooknooddeen.

Raj Behadur, (Defendant,) Appellant,

versus

Rughobeer Koomur, guardian of minor sons of Judur Koomur,
deceased, (Plaintiff,) Respondent.

Vakeel for Appellant—Fuqueeralal.

Vakeel for Respondent—Bamachurn.

ACTION of damages for illegal sale of buffaloes, laid at rupees 1,557-5-4. The history of this case being given at length in the Purnea Decisions for July 1846, pages 43 to 45, with the grounds on which it was remanded, its recital here becomes unnecessary; the judgment that follows embracing all points left for decision.

JUDGMENT.

This case was remanded for re-investigation on five distinct grounds, as set forth at page 44 of the Purnea Decisions for 1846, of which one only remains for consideration, the collector having been relieved on appeal to the Sudder Court, namely, that on which the appellant here was to be included as security for the nazir; whose relief in the former instance the principal sudder ameen has stated in his judgment, was from oversight; but, in my opinion, the appellant cannot on any ground here be made liable. The security of Muttarnath Ghose, it is seen from examination of the papers in the collector's office, had first been admitted, which was finally registered on the 7th February 1844; when additional security being required, that of appellant was tendered on the 25th April 1844; but rejected after enquiry on the 4th October 1845. The summary suit being instituted the 17th August 1843, and the security therein proffered, certified by the nazir on the 22nd November 1843, or five months before appellant's name appears, the buffaloes being sold on 30th December 1844, or two months after the rejection of his security. Who is therefore to be relieved.

THE 31ST JANUARY 1850.

Appeal No. 31 of 1848.

Sudder Ameen, Mr. Noney.

Choonee Sahoo, (Plaintiff,) Appellant,

versus

Kullian Das and others, (Defendants,) Respondents.

And in No. 32, the same Respondents as Appellants.

Vakeel for Appellant—Gorind Chund.

Vakeel for Respondent—Fuqueeralal.

CLAIM, for rupees 222, being value of sweetmeats. The appellant stating that Kunhye Das and Kokun Das, fathers of the res-

pondents, were supplied from his shop between Bhadoon 1243 and Cheyte 1246, with sweetmeats amounting to this sum, partly under their chittas, or written orders, and partly without these. Who reply that appellant and Pearchund jointly had a shop, rented to them by Kunhye Das and Kokun Das, who in 1249 sued them before the moonsiff for rent, for the period antecedent, or from 1248 to 1249, a set-off being then made of 92 rupees, 6 annas for sweetmeats supplied in 1247 and 1248. The appellant, in replication, disclaiming connection with Pearchund, who got this set-off for 1247 and 1248, from which he alone benefited.

The sudder ameen finds, on examination of the decree for rent, in favor of Kunhye Das and Kokun Das, that the appellant and Pearchund were thus jointly made liable, though it is not clear whether the benefit of the set-off was jointly enjoyed by them, but which being for sweetmeats supplied in 1248 and 1249, it cannot affect the present claim, which is therefore decreed for the amount supported by chittas, or rupees 123-15-2: with the like sum accruing as interest.

In appeal, it is contended, that the whole amount was to be awarded, the absence of chittas for a portion of this, not invalidating appellant's claim, cancelled according to respondents by set-off.

JUDGMENT.

From inspection of the judgment of the principal sudder ameen, passed on appeal of the appellant here, from the moonsiff's award above cited, it is found, that this was modified, to the extent of declaring the joint liability of appellant and Pearchund, to extend to 1246 only. The set-off granted, is for 1247 and 1248; from which therefore the appellant could not benefit, this claim being for a period antecedent, namely, from 1243 to 1246. Pearchund, moreover, is not a party to appellant's suit, thus admitting the averment as to such set-off; whether in collusion or otherwise, need not here be determined.

ZILLAH RAJSHAHYE.

PRESENT: G. C. CHEAP, ESQ., JUDGE.

THE 28TH JANUARY 1850.

No. 100 of 1846.

Regular Suit.

Inderchand Baboo, for self and as guardian of Gobindchand Baboo,
a minor, and Bindraj Baboo, their gomashtah, Plaintiffs,

versus

A, Gilson R. French, of Bansbarria factory; E, Poolinchunder
Chuckerbuttee, and F, Kishen Chunder Chuckerbuttee, Defen-
dants.

THIS suit was instituted in the principal sudder ameen's court and who disposed of it, but in appeal it was remitted for further investigation, for the reasons given in the proceeding of this court, dated the 5th March 1849, (*vide* Zillah Decisions, Rajshahye, for 1849, p. 13.)

On the case being brought on the file of this court, the usual notices were served on the parties; and the defendants not appearing, proclamations issued for their appearance—on A, at the Bansbarria factory, his usual place of residence. On the 28th June 1849, the plaintiffs withdrew their suit against the members of the late firm of Cockerell and Co.; and the other defendants not appearing, an order was passed for the case being tried *ex parte*, on the 31st August 1849.

In the order passed in appeal, the case has been stated, and all it is necessary to repeat is that the suit, or action is to recover 1,500 rupees cash, and rupees 28-8 *hoondian*, paid to E and F, by Bindraj Baboo, on a draft tendered by them as drawn by A, on the late firm of Cockerell and Co., in the month of Maugh 1252 B. S., or February 1846, but which, on presentation, was not paid by Cockerell and Co., as they suspected it to be a forgery. Proceedings were then instituted in the foudarry, or magistrate's court of Rajshahye, who, on the 16th February 1846, caused a notice to be issued to Mr. French, directing him to explain what he knew of the matter, at the same time the chief magistrate of Calcutta was requested to obtain the draft from Cockerell and Co. They on this sent, through the superintendent of police, copy of a letter addressed by them to

Mr. Gilson R. French, (quoted at length at page 14 of the Decisions for Rajshahye for 1849,) to show the draft had been returned to him. On the non-production of the draft the charge of fraudulently obtaining money under a forged draft was thrown out by the magistrate, on the 11th July 1846, and the complainants referred to the civil court. Hence this suit.

It is fully proved by the three witnesses examined in the principal sudder ameen's court, that the sum of 1,500 rupees was paid to E and F, on a draft, and who came to the *kotee* and asked the managers to discount a draft of Mr. French's, whose drafts they (the *kotee*) had previously been in the habit of cashing. The investigation that in appeal appeared incomplete was, as to A having, or not, received back the draft. From the third count of his answer filed in the principal sudder ameen's court, it might be inferred that he knew nothing of the transaction—had never received any draft from Cockerell and Co., and had never been called upon to produce it by the magistrate. That he must have been cognizant of the payment made, there can be no doubt from the letter written by him to Cockerell and Co., on the 16th February 1846, a copy of which has been furnished by Mr. Cochrane, the official assignee of the Supreme Court, who, in his letter, dated the 26th March 1849, writes, "It does not appear that Mr. Gilson French acknowledged specially Cockerell and Co.'s, of the 18th February 1846, but in his letter of the 3rd March 1846, he says 'all your letters and enclosures concerning the forgery case have reached me.'" Mr. Bennett, the deputy postmaster general of Calcutta, in a letter, dated the 29th March 1849, states that a quarter *tolah* weight paid letter to the address of Mr. G. R. French was despatched from Calcutta to the Surdah office, on the 18th February 1846, and was acknowledged to have been received on the 22d February 1846. After this what doubt can there be of the draft having been received by A.? and as he could so easily have come forward and produced it, and, *if a forgery*, proved it to be so before the magistrate, by his not doing so the court must deal with the case as a payment made on a genuine draft, for which, as a negotiable instrument, value was received, and, notwithstanding notice from the *drawees* that they had not paid it, he retained and still retains it, and therefore must be held jointly liable with the defendants, who took the amount from the plaintiff, Bindraj. The original sum (1,500 rupees,) with interest at 12 per cent., from the date of suit, 2nd December 1846, to this date, is therefore decreed against the three defendants, and the same rate of interest on the aggregate amount, until this decree is satisfied. Interest before suit cannot be allowed (as there is no proof of the sum being demanded from the present defendants) under Act XXXII. of 1839. The defendants will pay all the plaintiff's costs.

THE 28TH JANUARY 1850.

No. 2 of 1848.

Regular Suit.

Birjender Narayun Mullick, Plaintiff,

versus

The Collector of Rajshahye, Defendant.

THE plaintiff states that plaintiff was formerly treasurer of the collector's office in this zillah; that, when holding that office in the month of November 1838, a remittance of rupees 200,000 was made to Patna in the Government steamer *Megna*, the amount being packed in forty boxes, and each containing 5,000 rupees, but when the remittance reached the Patna collector's treasury, it was discovered that in one of the boxes there was a deficiency of 2,800 rupees, and which deficiency, as treasurer, he was obliged to make good under orders of Government, issued through the accountant general, in a letter dated the 28th of January 1839, No. 3275. This he paid down by instalments, between the month of April 1839 and 18th of June 1840, or the full sum of rupees 2,800. When the payment was made, the collector informed him, (plaintiff,) that he would apply to have the same returned, but to his great misfortune the accountant would not sanction it. That the deficiency was discovered in a box numbered 7, which box, in the previous month of April (1838,) had been packed in the presence of Mr. Henry Atherton, the deputy collector of Rajshahye, five bags, each containing 1,000 rupees, having been placed in the box; which was then secured with iron clamps and nailed down, and after being covered with gunny or sacking, was secured with black sealing wax, and a seal impressed on the wax. That when the forty boxes were sent down to the steamer, both the acting collector and deputy collector (Messrs. Dirom and Wheeler) went to see them put on board, accompanied by Mr. Perroux, the head clerk, plaintiff (as treasurer) and the treasury guard. The steamer sent off a boat on which the boxes were placed or shipped, and the jemadar, duffadar, and burkundazes went in the boat with the boxes to the steamer. That *then* all the boxes were properly secured, and the seals unbroken. That he therefore considered he had been unjustly made liable for the deficiency, and sued to recover what ~~he~~ had paid, with *double* the amount as interest, (the interest at 12 per cent., calculated from the date of the instalments being paid, exceeding the principal.)

To this the defendant has filed an answer, in which it is pleaded that the plaintiff, as treasurer, was liable for any deficiency contained in the boxes remitted from the Rajshahye treasury. That on his part (plaintiff's) a podar was sent with the remittance, and on opening the boxes in his presence, it was found that there were only three

bags instead of five, and these contained only 2,200 rupees, two bags 1,000 rupees each and 200.

It is unnecessary to give any more of the pleadings, all having been inserted at length above. On the case being taken up, on the 14th May last, the plaintiff was directed to name his witnesses, and the defendant to produce the original letter of the accountant in the revenue department, copy of the reply, the original receipt of the commander of the steamer, who took the treasure on board, and any proof to shew that the plaintiff as treasurer was *ex-officio* liable for any deficiency in the case of the out-turn of a remittance proving short. The Government vakeel, to a question by the court, replying "that it was not then the custom to weigh the boxes of treasure put on board steamers."

The defendant has accordingly filed the original letter, dated the 28th January 1839, signed by Mr. Dorn, revenue accountant, copies of the letters addressed to him by the acting collectors of Rajshahye and Patna, (Messrs. Dirom and Radcliffe,) reporting on the circumstances connected with the remittance, and the latter on the state of the box No. 7, in which the deficiency was discovered. The revenue accountant, on their reports, and other documentary evidence, records it as his opinion that "the abstraction of the treasure is *all but* proved to have occurred prior to shipment." The correspondence was subsequently laid before the Government, when "His Lordship in Council was of opinion that the officer despatching the treasure cannot, with any consistency, be absolved from his responsibility to make good the amount," that is, deficiency. And Mr. J. P. Grant, A. R. D., accordingly requested the collector of Rajshahye to recover the same from the treasurer, or present plaintiff. No agreement, or *ikrar*, given by the treasurer on his being appointed to the office, has been filed, but it may be presumed that, on taking the appointment, he conditioned to make good any deficiency discovered in remittances made from the Rajshahye collectorate. In another case in which the East India Company were defendants, it was ruled by high authority that "when the law presumes the affirmative of any fact, the negative of such fact must be proved by the party averring it in pleading;" and "that where any act is required to be done on the one part, so that the party neglecting it would be guilty of a criminal neglect of duty in not having done it, the law presumes the affirmative, and throws the burthen of proving the negative on the other side," (Williams *versus* E. I. Company, 3 East Reports, 192.) The court must therefore first consider the proof adduced by the defendant to prove that the box No. 7 (in which the deficiency was discovered) was not properly packed, and did not, at the time it was despatched, contain rupees 5,000, noted on the label affixed to the outside of the said box. The evidence of the *lascar*, by name Mazum Serang, goes to prove that he was in the steamer when the treasure was put on board, that one of the *khulas-es*, or *lascars*, on lifting one of the boxes

on board remarked that it was lighter than the rest, and on his lifting it up he also found it lighter, that he told this to the commander Mr. Sparling, who, after examining the box, and finding nothing broken, or injured, told him to take it on board, and which was done: That he never mentioned to the sepoy guard, who received the boxes at Dinapore, that one box was lighter than the others. Badoola Serang also deposes that one of the boxes was lighter than the rest, and this he mentioned to Mazum Serang, who told the commander, and who again examined the box and found all right. It was secured and packed like the rest. Mr. Perroux (formerly head clerk in the collector's office, and who went with the treasure on board the steamer) deposes that he heard a remark made by one of the lascars, that one of the boxes was lighter than the others. This was made when *returning* in the boat from the steamer. He did not perceive the *gunny* or sacking over the box to be unsewn. And, that "it was the business of the collector, together with the treasurer, to see the boxes were properly packed and covered with *gunny* before they were dispatched."

Now this evidence, in my humble opinion, by no means proves the negative, or that through the neglect on the part of the plaintiff the loss was sustained, either from the boxes, when packed, being opened, *before* they were put on board the steamer, or, when put on board, one box contained rupees 2,800 less than the others.

To return to the plaintiff's evidence.

First.—Mr. Henry Atherton's, who, after alluding to the time that had elapsed, and which made him hesitate in speaking of dates and the amount of treasure he packed, adds: "the treasure was packed in boxes, each containing rupees 5,000, and one thousand rupees in each bag: whatever quantity I was ordered to weigh and pack by the collector, I am sure I weighed and packed." He also adds: "the boxes were nailed down and clamped and packed with sack cloth tied up." Mr. Dirom, in his examination before the judge of Chittagong by commission, also on interrogatories, to the plaintiff's first question, replies, "that he cannot state with any certainty, as eleven years have elapsed since the occurrence took place," and on being questioned to his examining the boxes, before they were put on board the steamer, replies, "he cannot remember." But in his report, dated the 5th of December 1838, to the revenue accountant, he distinctly stated "that all the boxes (were) sealed and roped alike when they were sent on board the steamer, from this (the collector's) office, I having *myself* examined them immediately before they were sent on board, and having seen them taken from the carts and sent on board the flat in the boats belonging to the steamer." Now the court must give every credit to this report: and it is not to be supposed that so zealous and active a collector would have omitted so important a part of his duty. Mr. Wheler (the deputy collector) left the country before he could be examined, there being no judicial officer at Pubna who could examine him in English on the interrogatories filed. All that remains on this head to notice is the report (a letter dated 29th

November 1838), written by Mr. Radcliffe, acting collector of Patna, to the collector of Rajshahye, on the receipt of the treasure. In this he stated "that on counting them (the boxes) over, No. 7, to the address of the sub-treasurer, had a suspicious appearance both from the case with which the men raised it, and certain remarks that were made by them. On opening the box I discovered that the rope which surrounded it was sealed in the centre, which was not the case with the rest, that the seal impressed on the lid and side of the same was broken, and on the chest being opened I found rupees 2,200 was all it contained." Now if this was the state of the box when made over to the Patna collector, it must have been in a very different state to what it was when examined by the acting collector of Rajshahye, and sent on board the steamer, *in his presence*—"the boxes being then sealed and roped alike." Mr. Radcliffe, in this letter, states "that the podar sent with the treasure remained on the steamer, and not on the flat where the money was deposited," but *where* he stayed it may be assumed depended much on the commanders of the steamer and flat, and as he was sent, not to guard the treasure, but only to see the money counted when taken out of the boxes, the *mere fact* of his living in the steamer cannot and does not implicate the treasurer.

After carefully considering all these circumstances, I do not see how it is possible for the court to hold the plaintiff liable for the deficiency. The evidence taken in this court, and by commission, is as full, if not fuller, than that by the revenue authorities, and the reports (to which no exception has been made) have been admitted as documentary evidence; yet still no case has been made out. On the contrary, had the defendant sued, or been plaintiff, he must have been cast, and the court must have decided that the present plaintiff, or treasurer, could not be responsible for the loss sustained by the Government, who being their own carriers (the treasure having been sent in one of their own boats) ought to have had a regular weightment and entry made of each box before it was despatched. The Government pleader has stated that "this was not done because it was not *then* the custom to weigh boxes of treasure put on board the steamers." Mr. Perroux has deposed to the same effect, adding, "the practice commenced immediately after this defalcation was discovered, and I believe was adopted to prevent such an occurrence in future." The learned judge, who delivered the opinion of the court in the case of *Williams versus the East India Company*, cited above, in another case (*Clarke versus Hutchins*, 14 East Reports, 475) observed "that it was the duty (of the party sending goods by a carrier) to do whatever was necessary to secure the responsibility of the carriers for the safe delivery of the goods, *that, in case of a loss*, the defendant might have his indemnity against the carriers." But by the omission to weigh the boxes, before they were shipped, it is left in perfect and perplexing uncertainty when, how, and where the abstraction of rupees 2,800 (short in box No. 7) took place, and as the

plaintiff cannot have his remedy (from the omission of the collector to weigh the boxes) and as the commander, Mr. Sparling, took the boxes on board, as all right, notwithstanding the representation of his lascars that one box was lighter than the rest, and when he could so easily have ascertained if it was so, by having the box in question weighed against another, the plaintiff's responsibility, as to the large sum abstracted (by whom I do not pretend to say) totally ceased, and the court cannot legally uphold the order to refund the amount passed upon him, but must direct its being returned, with interest at 6 per cent. from the dates of the instalments being paid, to the date of suit, (11th August 1848,) and 12 per cent. from that date to this, with interest at the same rate on the aggregate amount until this decree is satisfied. The Government pleader has urged that interest could neither be demanded or adjudged under the provisions of Act XXXII. of 1839, but I do not see how the Act can apply to a mulct of this kind, imposed by the Government, on one of its servants, and who had no remedy but to pay and then to try the question (as he has done) by a regular suit. There has been great and unnecessary delay in suing, and hence the reduction of the interest, *before suit*, to 6 per cent. only. The defendant will pay all the plaintiff's costs besides his own.

THE 29TH JANUARY 1850.

No. 4 of 1847.

Regular Suit.

Mahomed Sudec Khan, (Plaintiff,)

versus

Nusseeb-il-Nessa, Goluck Chunder Muzmadar, and Dost Mahomed Khan Chowdree, (Defendants.)

THE plaintiff states that plaintiff was the son of one Mohabut Khan, and as whose heir he sues to recover possession of hereditary property, viz., a 2 annas, 13 gundahs, 1 cowree, 1 krant share of turuf Barra-ra and kismut Barra-ra, and a 4 annas share of turuf Kaimkollah of which he had been disseised in 1243 B. S., by the defendant, Nusseeb-il-Nessa, she pretending to have obtained the above by a deed of gift from Mohabut Khan, and on which false and fraudulent deed she had got her name registered as proprietor. The suit is laid at rupees 1,225, 1 anna, 6 pies.

Defendants deny that there was any fraud, that the deed was a genuine deed of gift from Mohabut Khan to his grandson, Busalut Khan (the husband of Nusseeb-il-Nessa,) and who since his death had been in undisturbed possession, and further the plaintiff, in a suit before the pundit sudder ameen of this court, (in which he was defendant,) admitted her possession under a deed of gift from Moha-

but Khan to Busalut Khan, therefore the plaintiff's suit was barred by the law of limitation. A copy of this answer filed, was read on the 10th instant, and the original *nuthee*, in which it had been filed, called for to examine the *vakalutnamah* on which the vakeel who filed the answer acted. The case has been this day brought up, and it would appear both the plaintiff in this case, and Nusseeb-il-Nessa, the defendant in that case, appointed the same *vakeel*, under separate *vakalutnamahs*. Sadee Khan, having been defendant, signed his own *vakalutnamah*, appointing Kulleemuddeen Ahmud, Nusseeb-il-Nessa the same vakeel and another as objector, pleading, in a petition, that she as a shareholder was in possession, but had not been made a defendant. The answer by Sadee Khan's vakeel was filed in Poos 1232 B. S., and as this suit was instituted on the 16th January 1847, corresponding with the 4th Maugh 1253 B. S., nearly 21 years had elapsed since the plaintiff admitted the defendant to be in possession of the property now claimed, and under the very deed of gift which it is his object to have set aside. Now under the Mahomedan law relating to *tenakuz*, or repugnancy, the plaintiff is estopped; and further the suit is barred by the provisions of Section 14, Regulation III. of 1793, and Regulation II. of 1805. It has been urged that the *vakalutnamah* to Kulleemuddeen Ahmud is not deserving of weight, as he has not endorsed from whom he received it; but this is futile, and I see no reason to doubt its being genuine, or to repudiate the answer filed by him on behalf of the present plaintiff. The claim is therefore dismissed, and the plaintiff will pay all the costs of the defendants who have put in appearance, or defended the suit.

THE 31ST JANUARY 1850.

No. 18 of 1847.

Regular Suit.

Mr. James Hastie, after his death, Mr. F. G. Sandes, receiver of the Supreme Court, (Plaintiff,)

versus

Joysunker Sandyal and Joygobind Surkar, (Defendants.)

• THIS suit was instituted in the sudder ameen's court, on the 23rd March 1847, and on the removal of that officer, on its being brought to the notice of this court, (by the officer in charge of the current duties of the office,) that James Hastie, the plaintiff, had been dead for *more* than six months, and this had not been intimated to the late sudder ameen by the vakeel, or any application made to him by his heirs and executors, the case was directed to be brought on the file of this court and struck off on default on the 11th November 1848. The Sudder Court, however, ruled, on the application of Mr. Sandes, receiver of the Supreme Court, that a notice should

have been issued before the order of dismissal on default, notwithstanding the plaintiff's vakeel had omitted to intimate to the sudder ameen or this court the death of his client. The case was therefore again brought on the judge's file, and the present plaintiff admitted to proceed in the suit on the 18th of April last.

As the object of the suit is to have set aside or reversed an award or order dismissing the late plaintiff's claim to *replevin*, passed by the late collector, Mr. Forbes, on the 12th March 1846, it will be as well to introduce an abstract of the award passed by him.

Mr. Robert Wight, Plaintiff,

versus

Joy Sunker Sandyal and Joy Gobind Surkar, Defendants,

The plaintiff represents that Joy Gobind Surkar, a *koruck ameen* on the part of Joy Sunker Sandyal, *durputneedar* of an eight annas share of *deear* Kidderpore, on the plea of arrears of rent amounting to rupees 317-5-2, attached the plaintiff's property in the Mandore factory, and made an application for the sale of the same by the commissioner of Beaulah. On this plaintiff deposited the amount claimed, and instituted this suit under Regulation V. of 1812. That plaintiff never gave any documents to the *durputneedar*, that on the 3d April 1844, a portion of the land for which rent was demanded, and which had been cultivated by the factory with indigo, had been made over by the magistrate of the district to the *durputneedar* under Act IV. of 1840, and that the *jumma* or rent of the remainder was only rupees 75, 6 annas, half of which, according to the decree of the adawlut, was made over to Rajah Ramkishen, and the other half was due to the Sandyal, but he had not paid it in consequence of his refusing to give *dakhilaks* with his seal and signature attached thereto. The plaintiff in support of this has produced three witnesses, and filed a *roobakaree* of the sessions court of this zillah, dated 13th February 1845, relating to the possession of four parcels of ground.

The defendant, in his answer, pleads that previous to his taking the *durputnee* of turuf Kidderpore, Messrs. Dunlop and Logan held as *jotedars* 473 beegahs, 19 chittacks of land in the said turuf, the *jumma* of which was rupees 385, 1 anna, 5 gundahs, which the persons who collected it made over to Rajah Ram Chand and Jowar Lall Paureh, when *koruck tuseeldar* on behalf of the collector; that in 1248 B. S., he (defendant) measured the lands and discovered that 9 beegahs, 6 cottahs in excess were in the occupancy of Mr. Logan, on which he assessed the whole at a *jumma* of Company's rupees 418, 12 annas, 9 pie; that Mr. Logan, after paying a portion, made over charge of the factory and *jotes* belonging to it to Mr. Wight, who not paying, he attached, under Regulation VII. of 1799, property belonging to the factory to recover Company's rupees 317,

5 annas, 2 pie, the balance due on the *jotes* from Bysack to Phalagoon 1252 B. S. In support of these statements, defendant filed a copy of a *jumma-wassil bakee* for 1247 B. S., filed by Harradhun Doss and signed and sealed by the collector of this zillah, and three original *jumma-wassil-bakees* for 1249, 1250, and 1251, written and attested by Brijlall Surkar, *gomashtah*, and a *terij nuthee* for 1248 B. S., to which the sudder ameen's signature was attached. Two witnesses were also produced by the defendant and examined, and Brijlall Surkar was also examined and attested the *jumma-wassil-bakee* papers he had prepared.

Decision of the Collector.

Although plaintiff states he is only in possession of land in *dear* Kidderpore, the *jumma* of which is rupees 75, annas 6, and the remainder is in the possession of Joy Sunker Sandyal, and has brought forward three witnesses to prove this, they (the witnesses) have failed to do so, and he has no other proof to adduce. On the other hand, the *jumma-wassil-bakee* papers filed by the defendant, the depositions of his witnesses and that of his *gomashtah*, entirely establish that the plaintiff was in possession of all the *jote*, the *jumma* of which is Sicca rupees 392, 10 annas, 5 gundahs. For this reason, it is ordered, that the plaintiff's case be dismissed, and the sum of Company's rupees 317, 5 annas, 2 pie, deposited by the plaintiff, made over to Joy Sunker Sandyal, who is entitled to costs, with moktear's fees, to be paid by the plaintiff.

In the plaint filed in the sudder ameen's court, it is averred that the collector did not institute any local enquiry, plaintiff objecting to the court ameen, one was appointed by the sudder ameen, who reported the whole of the land for which rent was demanded had been in the occupancy of the plaintiff in 1252 B. S. A long petition was given in against this report, accusing the ameen of including, as land belonging to the *durputnee*, contain resumed lands of Government in *chur* Kidderpore, but it does not appear that either the Government, (through the Government pleader) or the farmers of the *chur*, Messrs. Watson and Co., ever made any objection. And it is preposterous to suppose that the *durputneedar* would complain of being ejected from land which he had leased to the factory; or that the magistrate, with proof adduced that it was Mr. Wight's *jote* land, would have caused him to be dismissed from the same. Disputes between the defendant and the manager of the Catlamaree factory arose about lands, which the former claimed as his *putnee*, and from which an attempt was made to dispossess him, but prevented by the magistrate, and in all probability these disputed lands adjoined the Mandore or Murcha factory lands belonging to Hastie. Be that as it may, the court cannot find that he has been made to pay rent for lands from which he had been ejected by an order of

the magistrate. Rajah Ram Chunder, there is no doubt, had only a right to an 8 annas share of *deear* Kidderpore, before the Government resumed the whole, but as the defendant held the *durputnee* under him, it was only to Rajah Ram Chunder that Rajah Kishen Chunder (his brother) had to look. Plaintiff has no where averred that he had paid any rent to the latter, and if he had done so, would doubtless hold his *dakhillahs*. In a miscellaneous petition (after the completion of the pleadings) exception has been made to the way in which the defendant made his demand for rent, and the Sudder Court's decision in the case of Shewuk Mehtoon, petitioner, (Decisions for 1848, p. 43,) have been cited. The Court's opinion, however, in that case cannot affect in any way the collector's award, which rested on *jumma-wassil-bahee* papers, (filed in his court,) shewing that rent had been *previously demanded* and *paid* for these lands by the factory and Wight's predecessors in the management. But the simple question to be decided by this court is if there was anything illegal or irregular in the collector's decision, and without which it cannot be disturbed, (*vide* Sudder Dewanny Adawlut Decisions for 1848, p. 207.) Now as I find nothing either irregular or illegal in the decision, and no proof either in the record of the summary suit or of this court that impugns or affects the decision, it must be upheld, and the present suit dismissed, the plaintiff paying all costs of suit including of course the defendant's.

ZILLAH RUNGPORE.

PRESENT: T. WYATT, ESQ., JUDGE.

THE 5TH JANUARY 1850.

Case No. 11 of 1849.

Original Suit.

Sheikh Peerbuksh, mookhtear, (Plaintiff,) Appellant,

versus

Syud Ahmud Buksh Khan Bahadur, Principal Sudder Ameen of
Rungpore, (Defendant,) Respondent.

THIS suit was instituted against the principal sudder ameen of Rungpore for defamation of character while in the discharge of his public duties, the damages being laid at 1,500 rupees.

The plaintiff having cited Section 20 and Clause 3, Section 26, Regulation XXVI. of 1839, and Clause 5, Section 26, Regulation V. of 1831, and the order of Government, No. 7 of 1834, as the authorities, under which he had brought this action, and none of those authorities appearing applicable to this suit, and the plaintiff having omitted under Section 5, Regulation IV. of 1793, to represent this mistake to the court that it might permit a supplemental complaint containing the right matter being preferred, the plaintiff must be necessarily nonsuited. It is therefore ordered, that the case be nonsuited, with one-fourth of the costs.

THE 7TH JANUARY 1850.

Case No. 19 of 1848.

*Appeal from the decision of the Acting Sudder Ameen, Mr. Thomas, dated
20th November 1848.*

Oodaichunder Talookdar and his two brothers, (Defendants, with
others,) Appellants,

versus

Ramjoy Talookdar, (Plaintiff,) Respondent.

THE respondent, as plaintiff, brought this action in order to recover possession of two jotes situated in Kesshulee Danga, one as formerly rented by Amundee and Muddun, but, subsequently held

by plaintiff in the fictitious name of Nubeenchunder (defendant) with a yearly jumma of rupees 19, and the other as formerly rented by Akeenchund, and subsequently held by plaintiff in the fictitious name of Oodaichunder (defendant) with a yearly jumma of rupees 23-5-2, and of half a jote (the remainder being in his possession) situated in turuf Lukheepore, bearing an annual jumma of rupees 28, from all which he had been dispossessed by the appellants in 1253 B. S.

The plaintiff founds his claim to the previous possession of these jotes on his name having been registered in respect to them all in the serishta of the zumeendar of Baharbund in 1245 and 1247 B. S., those situated in Kesshulee Danga being entered in the fictitious names of his nephews Oodaichunder and Nubeen Chunder (appellants), from which circumstance they had now laid claim to them, and, on his having obtained, in addition to registry, a pottah dated 25th Assar 1245 for two years, viz., 1246 and 1247, from the farmer of Baharbund in respect to the entire jote in turuf Lukheepore. The plaintiff, besides, produces receipts for rent paid on account of these three jotes from 1248 to 1252 B. S., with the exception of the year 1249, when having been driven away from his lands through the oppressive conduct of the zumeendar's omrah, they fell waste, but to which he afterwards returned, viz., in 1250.

The appellants allege that they were in possession of half of the jote of turuf Lukheepore as their hereditary right, and that the two jotes in Kesshulee Danga were their private property, and to which the plaintiff had no lawful claim. They, however, fail to adduce any proofs in support of their pleas with the exception of one witness.

The lower court decreed in favor of the plaintiff, with costs, and interest and wasilat from the date of dispossession to the execution of the decree.

Entirely concurring with the lower court in the grounds of its decision, I dismiss the appeal, and confirm the order of the sudder ameen.

THE 10TH JANUARY 1850.

No. 16 of 1848.

Appeal from the decision of the Sudder Ameen of Rungpore, dated the 20th June 1848.

Heera Dass Byragee, (Plaintiff,) Appellant,

versus

Sheebraj Roy and Sheebpershad Roy, (Defendants,) Respondents.

THIS suit was instituted by the appellant for the recovery of a claim, amounting to rupees 108-6-1 from the respondents, founded

on an ikrar, or agreement, dated 3rd Maugh 1253 B. S., signed by both respondents and attested by five witnesses, the conditions of which were that from an advance from the appellant of rupees 218, the respondents were to purchase potatoes, sugar, ubeer, and other things at Rungpore, and sell them at Gowahatty (in Assam), and from the sale proceeds thereof, after deducting one anna on each rupee, as their profit, they were to pay the remainder, with the principal sum advanced, to the appellant. The respondents consequently, by an account rendered, bought things at Rungpore to the extent of rupees 119-8, and re-sold them at Gowahatty for rupees 361-6, the profit being rupees 241-14, from which, after deducting rupees 15-1-11 as the profit of the respondents, and expenses amounting to rupees 40, there remained rupees 186-12-1, to which, adding the principal and interest rupees 3-10, the appellant claimed the sum of rupees 408-6-1.

The respondents denied the plaint, Seebraj Roy *in toto*, and the other, who said his name was Sheeb Persun and not Sheeb Pershad, stating that he had accompanied, as a burkundaz, another byragee by name Chytun, to Gowahatty, who having died there, he had taken charge of rupees 145, with other property, which he (deceased) had left, and returned to Rungpore and delivered the same to the appellant, as heir of the deceased, excepting 60 rupees, for which he gave him a bond, and that appellant then gave him a farig, or acquittance, for all he had received from him.

The lower court dismissed the plaint, doubting the ikrar and considering the farig proved.

On review of all the papers of this case, I differ from the lower court as to the conclusion it has arrived at, inasmuch that I think the ikrar to have been fully proved by the five subscribing witnesses to it; no proof having been adduced by the defendant, Sheeb Pershad, as to one of those witnesses, by name Kheida, having given false evidence by having before deposed in the magistrate's court as one Kisshore. Both the ikrar and bond, the latter dated the 26th Jeyt 1254, bear the signature of this defendant, as Sheeb Pershad and not Sheeb Persun, and the handwriting in Nagree is one and the same. The bond, moreover, is for a separate sum of rupees 60, lent by the plaintiff a few months after the ikrar, and contains no reference as to its having been given, as alleged by this defendant, for the balance amounting to this sum of the money left by the byragee, and paid to the plaintiff.

As to this defendant's farig stated to have been obtained from the plaintiff at Rungpore, two of three subscribing witnesses to it were inhabitants of Benares and Ghazeepore, and had been brought by the defendant from Gowahatty as in his pay, whose evidence I cannot credit.

I, therefore, decree the appeal, with costs, against both defendants, for rupees 397-12-1, disallowing rupees 10-10 account certain expenditure and interest, and rescind the order of the lower court.

THE 11TH JANUARY 1850.

No. 1 of 1849.

Appeal from the decision of the Acting Sudder Ameen, dated 25th November 1848.

Nasir Mahomed, Mussamut Kaltee, wife of Durbaroo, deceased, with others, Defendants, (Appellants.)

versus

Rummonee Mohun Chowdry, and as guardian of his brother, Anung Mohun Chowdry, minor, Plaintiff, (Respondent.)

THE respondent, as zumcendar of Toos-Bhundur, brought this complaint against the appellants as his ryuts for arrears of rent from 1242 to 1253 B. S., amounting, with interest, to rupees 683-12-5-14, founded on a kubooleut of Nasir Mahomed (appellant) whose sharer was his brother, Durbaroo, deceased, late husband of Mussamut Kaltee (appellant), dated 15th Bysakh 1242 B. S., bearing a yearly rent of Sicca rupees 124-12-16, or Company's rupees 133-10-4, assessed on 1 goun, 2 bissees, 15 kannies of land, situated in talook Sindurnah, of gird Balaparah, in chuckla Kauzeehaut, and on a decree of the moonsiff of Bhotmaree, dated the 28th June 1845, for arrears of rent due from the defendants, which, on appeal, was nonsuited by the principal sudder ameen, and in consequence of which this suit was again preferred.

The defendant, Nasir Mahomed, alleged that he had received deductions from his rent, first in 1242, of rupees 20, and afterwards in 1248 of rupees 32, making a total of rupees 52, of which he had documentary evidence, and that he had paid the remainder of his rent for the years claimed.

The defendant, Mussamut Kaltee, denied her liability to the claim preferred, on the plea that her late husband, Durbaroo, had, by a deed of gift, left all his property to her.

The lower court decreed the amount of suit against Nasir Mahomed and the estate of Durbaroo, releasing, with the exception of the heirs of Durbaroo, the rest of the defendants.

On a review of this case, as the plaintiff had denied the documents on which the claim to the deductions of rent stated, was founded, and as the defendant, Nasir Mahomed, had adduced no evidence in proof of those documents being genuine, and as by the local enquiries of the ameen when the moonsiff of Bhotmaree passed a decision on the 15th Assar 1252 B. S. (which for certain informality was nonsuited)

in favor of the plaintiff's mother, the then holder of the disputed land, (whose under-tenant was Nasir Mahomed,) Nasir Mahomed and Durbaroo were then found to be in possession of the entire land under dispute, and were in possession at the time of the present suit, and as the appellants can show no receipts for rent paid, the plaintiff is clearly entitled to a decree, which, in modification of the lower court's decision, I award, with costs equivalent to the decree, against the appellants, for rupces 523-2-1-12, as the principal, disallowing, in conformity with a decision No. 142, of the Sudder Dewanny Adawlut, of the 5th July 1848, all interest in the case, and I except from liability all the other defendants in the suit.

ZILLAH SARUN.

PRESENT : H. V. HATHORN, ESQ., JUDGE.

THE 29TH JANUARY 1850.

No. 12 of 1849.

*A Regular Appeal from a decision passed by Moulree Waheedooddeen,
Moonsiff of Sewan, dated 28th December 1848.*

Jaigopal Saho, (Defendant,) Appellant,

versus

Musst. Soogaree, (Plaintiff,) Respondent.

CLAIM, to cancel the sale of the rights and interests of Kewul in a tiled house and verandah in Aligunge Sewan, under date the 5th January 1848, and to annul a summary order of the judge of Sarun, authorizing the sale, dated 25th June 1847: value Company's rupees 25.

This suit, instituted on the 18th July 1848, set forth that the said Kewul had no rights and interests in the house sold, and therefore the sale of assumed rights of the said Kewul, purchased by defendant, the decreeholder, in the name of his servant Kamroop, as well as the summary order in appeal, permitting the sale to take place, should be annulled. Plaintiff says that the house originally belonged to Nundlal Tumolee, who sold the ruins to Hurkishen, (the husband of Musst. Gungnee,) and their son Dhonda, who rebuilt it, and after their death the heirs, Musst. Gungnee and Buktari, her son, sold it to plaintiff for 45 rupees, on the 28th November 1845.

Defendant, the purchaser, contents himself with rebutting plaintiff's arguments, but does not adduce any proof in support of Kewul having had any rights and interests in the disputed house. He says that Kewul brought an action against Musst. Gungnee, who confessed judgment, and first pledged and afterwards sold the said house to him, the purchaser, in execution of the decree, but the defendant brings forward no proof of this, whereas, on the contrary, plaintiff produces her bill of sale duly attested by witnesses, and the moonsiff states, in his decision, that he personally had ascertained that she had been in possession before the sale of Kewul's rights took place.

The moonsiff of Sewan, upon the above grounds, upheld the plaintiff's claim for possession, by reversal of the sale of Kewul's assumed rights.

The moonsiff's decision appears just and proper, and I find no sufficient reason to interfere. Plaintiff has now substantiated her prior right by purchase. The purchaser, who is also the decree-holder, must look to other sources for the realization of his decree against Kewul Saho.

ORDERED,

That this appeal be dismissed with costs, and the decision of the moonsiff be affirmed.

THE 31ST JANUARY 1850.

No. 31 of 1849.

A Regular Appeal from a decision passed by Moulree Waheedooddeen, Moonsiff of Sewan, dated 22nd January 1849.

Bonuck Saho, (Plaintiff,) Appellant,

versus

Sahibram and Saligram, (Defendants,) Respondents.

CLAIM, Company's rupees 233, on a deed of instalment, dated 25th Sawun 1250 Fussily.

This suit was instituted on the 22nd June 1848. It was set forth that defendants were previously indebted to plaintiff in the sum of Company's rupees 233, in payment of which this instalment bond was executed, agreeing to liquidate the principal without interest at the rate of 20 rupees a year, from 1251 to 1261 Fussily, a period of eleven years, and the balance of 13 rupees in the following year 1262 Fussily. Nothing having been paid, this suit was instituted in 1848, corresponding with 1256 Fussily, explaining that, as defendants had failed to liquidate by instalments, plaintiff was entitled to claim the full amount at once.

Defendants filed their answers to this suit on the 11th July and 23rd November, and the plaintiff's replies to these separate answers are dated the 10th August 1848, and the 6th January 1849, and the defendants' rejoinder on the 20th January 1849. Thus the pleadings in this suit were illegally filed and received at intervals, extending over a period of 7 months.

Defendants deny the charge *in toto*, declaring it to be a false claim from motives of enmity arising out of a quarrel about *caste*. •

The moonsiff has dismissed this suit, placing no reliance whatever upon the evidence of the subscribing witnesses, and others, alleged to have been present at the execution of the bond.

JUDGMENT.

I concur in several of the reasons assigned by the moonsiff for disbelieving the transaction. If in truth an amicable arrangement for the payment of an old debt on bond by the execution of a new instalment bond, (extending over a period of twelve years,) took place, why is the original bond not produced in support of this subsequent transaction? neither in the plaint nor in the reply is any mention made of the date even of the original bond, or the fact of its having been restored. Again, there is an informality in the mode of subscribing to this bond. It purports to have been signed by *both* defendants, and terminates with the expression “ba kulum khas;” but the evidence alleges that it was signed by Saligram alone, if so, it would have been differently worded; both defendants are stated to be capable of writing, but neither of their signatures correspond with the acknowledgment on the margin of the bond. I am induced to believe that some money transactions formerly did exist between the parties, and the original bond having remained in plaintiff's hands *upwards of twelve years*, this alleged transaction of a recent date is set forth with a view of rendering the claim cognizable, which otherwise it would not have been. This instalment bond is certainly not satisfactorily proved to have been executed by defendants as set forth by plaintiff, and the moonsiff was therefore right in dismissing the claim.

ORDERED,

That this appeal be dismissed with costs, and the decision of the moonsiff of Sewan be affirmed.

THE 31ST JANUARY 1850.

No. 34 of 1849.

A Regular Appeal from a decision passed by Syed Asud Alee, late Moonsiff of Chupra, dated 22nd January 1849.

Moheput Rai, (Defendant,) Appellant,

versus .

Kalipershad, (Plaintiff,) Respondent.

CLAIM, Company's rupees 212-3, on an account.

This suit was instituted on the 3rd July 1848. The amount claimed by plaintiff, a banker, is chiefly for revenue paid into the collectorate on account of the defendants Ramsurn and Moheput, due for mouzah Basawan, pergunnah Burree, in 1253 and 1254 Fussily, with interest to 24th Jeyt 1255 Fussily. Moheput is a co-sharer in the estate, and Ramsurn was his farmer in possession upon an advance.

Moheput urged that the farmer in possession was responsible to the banker for the revenue paid on his, the farmer's, account, and that he, the proprietor, was a defendant in the case by way of *precaution* only. Ramsurn admitted having been in possession as farmer since 1248 Fussily, and having previously liquidated the revenue of Moheput's share through *plaintiff*, but that the malik Moheput had dispossessed him in 1254 Fussily, in consequence of which he had desired plaintiff to stop payment on his account, and that the malik Moheput was consequently responsible for the payments made in that year and subsequently.

The late moonsiff of Chupra decided that, from a decision passed in his court, dated 27th March 1848, at the suit of Ramsurn *versus* Moheput, the two defendants, and also from a report from the darogah of Tajpoor, dated 4th November 1846, the interference of the malik Moheput and the dispossession of the farmer Ramsurn in the beginning of 1250 Fussily were proved. He therefore awarded against the defendants in the following proportions:

	Co.'s Rs.	As.	P.	K.
From Ramsurn on account of 1253 Fussily,.....	41	5	11	10
From Moheput on account of 1254 Fussily, ...	170	13	0	10
Total,.....	212	3	0	0

with interest on principal as usual to date of decree, and thenceforward on the full amount decreed to date of payment.

Moheput appeals in dissatisfaction, maintaining that Ramsurn was liable for the whole claim, according to the terms of his lease, which stipulated payment of the Government revenue, that he (Ramsurn) had realized three-fourths of the rent on account of 1254 Fussily, and had entered his name in the mahajun's books as the party in possession.

JUDGMENT.

The point for adjudication in this suit is not, as to which of the defendants is liable for the Government revenue from 1253 to 1255 Fussily, but the amount due by each defendant for advances made on their account respectively, according to the banker's books. The exact period of dispossession is disputed, and the documents cited by the moonsiff prove nothing; in this suit of the banker, the question does not turn upon who *ought* to have paid, but *on whose account* the banker *actually did pay*. To ascertain this point we must refer to the banker's books, which are not disputed. I find that, with exception of 17 rupees paid in two instalments in 1253 and 1254 Fussily in *Moheput's name*, the *whole amount* advanced by the banker *on this account* is entered in *Ramsurn's name*; therefore, the moonsiff was not justified in awarding against Moheput sums advanced by the banker on Ramsurn's account. The transactions between the banker and

the parties for advances in payment of revenue, are totally distinct from the farming engagement entered into between the malik and the farmer. The latter parties must adjust their own account, but the claim of the banker against either or both must be verified by his books, or other evidence adduced.

ORDERED,

That the decision of Asud Alee, in this case, be reversed, with refund of stamp fees, and the suit be remanded to the *present* Chupra moon-siff for re-trial. The costs to be adjusted on final adjudication of the case.

ZILLAH SHAHABAD.

PRESENT: H. BROWNLOW, ESQ., JUDGE.

THE 8TH JANUARY 1850.

No. 30 of 1848.

*Regular Appeal from the decision of Syed Munour Allee, late first grade
Principal Sudder Ameen of Shahabad, dated 4th August 1848.*

Oudh Kai, (Defendant,) Appellant,

versus

Nurkoo Sing, (Plaintiff,) Respondent.

THIS suit was instituted by the plaintiff (respondent) on the 6th December 1847, with the view to obtain possession on 9 beegahs 10 biswas of land in chuck Dyal, pergunnah Baragaon, as well as to recover the arrears of revenue due thereon, from the year 1245 to 1254 F., amounting, with interest, to rupees 731-0-14 $\frac{1}{4}$.

Plaintiff states that he let the above parcel of land to the defendant named, agreeably to a pottah, from the year 1237 to 1241 F., at the rate of rupees 2-8 per beegah, who neglecting to pay the revenue of his own accord, plaintiff was compelled to resort to a law-suit for its recovery up to last year of the lease. That on its expiry, plaintiff desired defendant to refrain from cultivating the land from the year 1242 F., threatening, by the issue of a notice to him under the provisions of Regulation V. of 1812, to levy the rent of that year at the rate of rupees 5 per beegah. That the defendant notwithstanding kept possession of his tenement, without discharging one fraction of the revenue of that year. That the plaintiff was in consequence again compelled to have recourse to the courts for the realization of the revenue due at the enhanced rate from the year 1242 to 1244 F., but that having omitted to preserve a copy of the notice he had served upon the defendant, he failed to obtain a decree at the new rate, being obliged to be content with a final award at the old one of rupees 2-8 per beegah. That the plaintiff has since issued a fresh notice upon the defendant in the month of Jeyt 1248, to the same purport as before, but with as little effect. He therefore now sues for rent at the higher rate of 5 rupees per beegah for the years specified, as well as for possession, considering himself well nigh disseised owing to the defendant's persisting to occupy the land in spite of his repeated efforts to resume it.

Oudh Rai, defendant, answers that, as the plaintiff himself asserts the rate to have been rupees 2-8 per beegah, it is out of the question for him to expect more. That this rate was maintained on a former occasion by an award of one Chowdry Raj Coomar Sing, an arbitrator, to which proceeding plaintiff was a party. That the notices alluded to by him were never promulgated, and that, in consequence of the plaintiff's refusal to take the rent, he had petitioned for the receipt of the same, for the years 1245 to 1255 F., as a deposit in the civil court.

Plaintiff replies that the award of arbitration can be conclusive only of the rent of the period affected by it, and not as to that of succeeding years.

The principal sudder ameen decreed this case in favor of the plaintiff, for the sum of rupees 253-4-10-12 and for possession. He was of opinion that defendant, having fallen into arrears prior to the year 1245 F., had forfeited his right to retain possession of his tenement; but that the notice, relied upon by the plaintiff, not having been served in conformity to the mode prescribed by Regulation V. of 1812, the rent demanded could not be awarded at a higher rate than rupees 2-8 per beegah, without interest, inasmuch as defendant had always produced it in court for deposit.

Appellant disowns being a defaulter, and urges that, the respondent having merely sued for the balances alleged to be due to him subsequently to 1245 F., the default imputed to him antecedent to that year can be no just ground for disseising him of his tenement.

Under the circumstances of the case, and with reference to my judgment in No. 31 of 1848, this day recorded, I uphold that part of the principal sudder ameen's decision, which awards possession to the plaintiff of 9 beegahs 10 biswas of land, and dismiss the appeal with costs.

THE 8TH JANUARY 1850.

No. 31 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 4th August 1848.

Nurkoo Sing, (Plaintiff,) Appellant,
'versus

Oudh Rai and five others, (Defendants,) Respondents.

THIS is another appeal from the decree of the principal sudder ameen, the particulars of which case will be found recorded in the preceding number (30 of 1848.)

The appellant protests against the reduction in the rate at which he claimed his rents, the disallowance of interest, and the exemption of Isree Dyal and others from the decree. He alleges that the notice upon which he sought the increased rent was duly exhibited to the respondents, but, upon their refusal to acknowledge it, it was

stuck up at their residence; that not having received the rents in due season from the respondents, the interest demanded was fairly due; and that Isree Dyal and others, being in coparceny with Oudh Rai, were equally liable.

That part of the principal sudder ameen's judgment which awarded possession, I have duly upheld in case No. 30. The remainder I amend for the following reasons:

It is, in my opinion, clearly proved that the notice upon which enhanced rent is sought was duly served upon Oudh Rai, Soodan Rai, Reetoo Rai, and Mahabul Rai, in the month of Jeyt 1247, and in the presence of them all was affixed at their usual place of residence in mouzah Buoborah. The requirements therefore of Section 9, Regulation V. of 1812, have been duly met, and from the year 1248, plaintiff is unquestionably entitled to recover at 5 rupees per beegah. As there is no contention regarding the quantity of land cultivated, I decree as follows, first, possession on these 9 beegahs 10 biswas of land, and secondly, rent from 1245 to 1247 inclusive, at rupees 2-8 per beegah without interest, and from 1248 to 1254 at rupees 5 per beegah, with interest, however, only, under the circumstances of the case, on rupees 2-8 per beegah, and from the date of the principal sudder ameen's decision to that of realization full interest will be charged. All costs in both courts are chargeable to defendants, as I find their coparceny with Oudh Rai fully established.

THE 10TH JANUARY 1850.

No. 32 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 4th August 1848.

Musst. Joga Kour, (Plaintiff,) Appellant,

versus

Baboo Bhoranauth Sing, (Defendant,) Respondent.

THIS suit was instituted by the plaintiff (appellant) on the 18th December 1846, in order to recover the sum of rupees 720, for the years 1252 and 1253, at rupees 30 per mensem, and to obtain an injunction from the court for a future monthly stipend at the same rate for the maintenance of herself and minor son.

The particulars of this case will be found at pages 23 and 24 of the Zillah Decisions for May 1848. It was then remanded for re-trial to the principal sudder ameen, in consequence of his former judgment having been defective, inasmuch as no reasons were assigned by him for withholding maintenance for 1252 and 1253 F. S. I was therefore unable to say, whether it was an accidental omission on his part, or whether he had legitimate grounds for disallowing that part of the plaintiff's petition. The previous award also was at the rate of 15 rupees per mensem to the mother for the son, but the

plaintiff having asked for maintenance both for *herself* and *son*, this point likewise had to be reconsidered.

The present decision of the principal sudder ameen, on re-trial, is the same as his former one; the refusal of any allowance for the years 1252 and 1253 being grounded on the fact of a *final* separation between the litigants not having taken place before the month of Maugh 1254, although the appellant had removed from the respondent's residence into some other quarters in the same village in Aughun 1252, and that the sum of rupees 15 per mensem, previously adjudged, was sufficient for the maintenance of the minor, his mother, who was charged with his care, having no separate right to an exclusive assignment.

From this decision the female appeals again, alleging that the respondent derives a net profit of rupees 1,400 annually from his estates, and is well able to spare rupees 360 per annum for the joint support of herself and minor son, that the 15 rupees allowed is insufficient to maintain her ward, much less can it provide for her, whose support was also binding on the respondent, and that, it having been proved that the appellant separated from the respondent from Aughun 1252, the rejection of her claim for that and the succeeding year was unwarrantable.

For the reasons assigned by the principal sudder ameen in his present and previous judgments, I am of opinion that his decision is perfectly correct, and confirming the same, I dismiss the appeal with costs.

THE 11TH JANUARY 1850.

No. 33 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 4th August 1848.

Musst. Joga Kour, (Plaintiff,) Appellant,

versus

Baboo Bhoranauth Sing and Musst. Roopraj Kour, (Defendants,) Respondents.

THIS suit was instituted by the appellant on the 16th December 1846, for the purpose of obtaining an order prohibiting the alienation of 2 annas of talooka Kythee, pergunnah Bhojpoor, by Baboo Bhoranauth Sing, under the circumstances stated in the plaint.

The particulars of this case will be found at pages 22 and 23 of the Zillah Decisions for May 1848. It was then remanded for re-trial to the lower court for the following reasons, viz.—“ that the wording of the principal sudder ameen's roobukaree of the 21st June 1847, was too loose to enable me to give currency to it. If he means

that the 2 annas in mouzahs Kythee Khas and Adurpah may be sold by the defendant, in consequence of the necessity shown, his judgment is imperfect, as he has yet to adjudicate on the other point urged by the plaintiff, who prays for an injunction, prohibiting any further alienation of the property comprised in the 2 annas of talooka Kythee, consisting of sundry villages besides. If, on the other hand, it is intended to be ruled by the lower court that the defendant may dispose of his property generally at his own discretion, without the consent of any one, the judgment is decidedly opposed to those provisions of the Hindoo law to which the property is subject; for it is distinctly laid down in page 71, vol. VI. of the Sudder Dewanny Reports, that 'according to the law as current in Behar, the alienation by a Hindoo father of immovable ancestral property without the consent of his sons, except on proof of necessity, is illegal,' and at page 73, it is added—'that as the right of representation is admitted as far as the great-grandson, the fact of the plaintiffs' (in that case) being grandsons would make no difference in the result.'

"I therefore admit this appeal and remand the case for re-trial to the principal sudder ameen, with reference to the above remarks, and in future he is requested so to word his roobukarees that there may be no room to cavil at the meaning of his judgment. The usual order will pass for the refund of stamp value."

The case was re-tried by the principal sudder ameen on the 4th August 1848, and, in adhering to his former judgment, that officer has ruled that the conditional sale of 2 annas of mouzahs Kythee Khas and Adurpah was an indispensable act, having been rendered imperative by the necessity to discharge certain claims decreed against the respondent, and that appellant having failed to prove that any further alienation had been made or was designed, he was unable to pronounce upon the necessity or otherwise of any disposal which may hereafter be made.

In appeal, it is stated that the object of the appellant's suit was to save her minor son's estate unencumbered for him, and as the respondent had evinced a disposition to involve it by having unnecessarily contracted an enormous loan to discharge a comparatively small claim, which could have been fully satisfied by the profits of his estate, she was compelled to resort to an action in order to prevent further encumbrances, inasmuch as the appellant's minor son being the grandson of the respondent, and heir at law to all his real property, not only absolute necessity, but also his consent or that of his authorized guardian was essential to render any alienation legal under the Hindoo law of inheritance.

I agree with the principal sudder ameen in thinking that the conditional sale alluded to was made for no bad purpose, being designed to pay off a decreed claim, on account of which the whole estate was in jeopardy, as shown by the collector's proclamation of

the 20th June 1846, and as subsequent necessity may justify a similar act, the injunction prayed for by the appellant, prohibitory of further alienation, cannot be complied with.

The judgment of the lower court is upheld, and the appeal dismissed with costs.

THE 16TH JANUARY 1850.

No. 35 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 9th August 1848.

Nuthunia and Joogun, (Defendants,) Appellants,

versus

Sunker Ram, (Plaintiff,) Respondent.

THIS suit was preferred by the plaintiff (respondent) on the 18th January 1848, for the recovery of a sum of rupees 1,453-8, principal and interest included, in virtue of a bond executed in his favor by Sukhee Chund and Doorga Pershad, the defendants (appellants,) sons of Sukhee Chund, being likewise included in the prosecution, in consequence of their being resident with the actual debtors at the time of the contraction of the loan and subsequently. Sukhee Chund and Doorga Pershad allowed the case to go by default, and a decree was accordingly passed against them alone for the entire sum claimed, with interest and the legal expenses. The appellants, who pleaded irresponsibility, being neither debtors nor parties to the bond, although exonerated from liability, have, notwithstanding, been charged with the expenses incurred by them in their defence; for the reimbursement of which by the respondent, who had unnecessarily harassed them with the annoyance and expenditure incident to a civil action, they now appeal.

After a careful perusal of the papers, I must say that I can find no reason whatever for saddling these individuals with their costs. They were, in my opinion, most unnecessarily brought into court, having nothing whatever to say to the bond executed by Sukhee Chund, their father, and Doorga Pershad. Under these circumstances, I amend that part of the principal sudder ameen's decision, and direct that the appellants' costs in the court of first instance be borne by the plaintiff himself, as also the expenses of the appeal in this court.

THE 17TH JANUARY 1850.

No. 36 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 15th August 1848.

Baboo Ramyad Sing and Baboo Lulloo Sing, (Defendants,) Appellants,

versus

Musst. Poohoop, (Plaintiff,) Respondent.

THE action which led to this appeal was instituted by the plaintiff (respondent) on the 22nd September 1847, to obtain possession, and to be enrolled as proprietress, of mouzah Burhapoor, puttee Khas, and puttee Nerunjun Sing, as well as of mouzah Dhurrea, pergunnah Bhojpoor, in virtue of an alleged mokururee lease, at a valuation of rupees 1,220-12.

Plaintiff asserts that Baboo Juddonath Sing, after having made a division and distribution of all his property, real and personal, among the defendants, his heirs, granted to her and to her heirs in perpetuity a perpetual lease of mouzah Burhapoor, puttee Khas, and puttee Nerunjun Sing, at an annual jumma of rupees 252, and of mouzah Dhurrea at a jumma of rupees 66-2 per annum, agreeably to a duly attested deed, dated the 2nd April 1846, in consideration of her long and faithful services; making the revenue due thereon viz. rupees 126, for the two puttees, and rupees 33-10 for mouzah Dhurrea, payable by her into the treasury, or to himself and to his heirs and successors after his decease; that the plaintiff enjoyed possession of the lease until the month of Kartick 1254 F., when Baboo Juddonath Sing having demised, his heirs, the present defendants, not only opposed her in the collections, but refused to receive the revenue. She has therefore recourse to this suit.

Defendants urge that the lease pleaded by the plaintiff was never granted; Baboo Juddonath Sing having during his lifetime, to prevent future family feuds, made an equal distribution of all his property, movable and immovable, between his two sons, Munraj Sing, the father of the named defendants, and Baboo Ramdour Sing, co-defendant, executing a deed to that effect on the 18th Assin 1245 F., of which he delivered to each a copy, and in conformity to which they took possession. That of the property thus divided, Baboo Juddonath Sing reserved for his own maintenance during life, but without the right to alienate in any way, the two puttees in talooka Burhapoor, and a portion of talooka Kaup, from the share of Baboo Munraj Sing, and mouzahs Mundaha and Dhurrea from the share of Baboo Ramdour Sing, but of which the defendants recovered possession after the death of Juddonath Sing. That Juddonath Sing himself denied possessing the right to make any kind of transfer of the property distributed by him among his sons, in two suits

brought by the present defendants for the reversal of a deed of gift, executed by him in favor of Mirza Bahadoor Allee and Mirza Shoojayet Allee for mouzah Dhurmpoor, and filed a deed of adjustment (solehnamah,) in accordance with which those suits were disposed off. That Juddonath Sing, becoming dangerously ill at the commencement of the year 1253 F., took up his residence in Buxar, where he expired, never being intermediately in the possession of a sound mind so as to be capable of executing deeds of any nature, and that if the plaintiff then contrived by any undue means to get the lease in question, it cannot surely be allowed to stand, especially as the lessor had not the power to make the lease, nor did the lessee ever obtain possession.

Plaintiff states, in reply, that Juddonath Sing has made sundry other alienations, subsequently to the distribution urged by the defendants, which are all yet extant; the property so conveyed being still in the occupation of the parties in whose favor the transfers were made.

The principal sudder ameen, being of opinion that the deed under which plaintiff claimed her mokururee was executed by Juddonath Sing, in a sound state of mind and in the exercise of a right to which there was no legal impediment, a perpetual lease being, as he conceived, no alienation, which alone Juddonath Sing had bound himself not to make, decreed to the plaintiff merely possession, ruling that it was not usual to register the names of lessees in the collectorate.

In appeal, the appellants contend that a mokururee, such as the respondent professes to have obtained, that is, in recompense for long servitude for herself and her heirs for ever, is more a gift than a simple arrangement for the realization of revenue, and that if this lease be maintained and the decree of the principal sudder ameen be upheld, the deed of partition under which the estates *sub lite* have been allotted virtually becomes null and void, as, contrary to an express provision of that instrument, the appellants and their uncle are debarred (although Juddonath Sing is dead) from resuming possession of the property.

The *mens sana* of Juddonath Sing although not exactly *in corpore sano* at the time he executed the mokururee deed, dated the 2nd April 1846, in favor of the plaintiff, is, in my opinion, fully established, nor is there any thing in the tukseemnamah or solehnamah, relied on by the defendants, prohibitory of the exercise of the right of making a deed of the nature *sub lite*, viz. a perpetual lease. I therefore uphold the instrument as a valid one, and, in confirming the judgment of the lower court, I dismiss the appeal with costs.

THE 17TH JANUARY 1850.

No. 37 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 15th August 1848.

Ramdour Sing, (Defendant,) Appellant,

versus

Musst. Poohoop, (Plaintiff,) Respondent.

THE particulars of this case having been fully detailed under the foregoing number, and the grounds of dissatisfaction with the judgment of the lower court being similar to those assigned by the appellants in that, nothing remains to be added here but for the same reasons to dismiss this appeal also with costs.

THE 21ST JANUARY 1850.

No. 38 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shuhabad, dated 8th September 1848.

Gondour Tewarry, (Plaintiff,) Appellant,

versus

Musst. Muqbool Fatmeh, (Defendant,) Respondent.

THIS suit was instituted on the 7th December 1847, by the plaintiff (appellant) for the realization of rupees 595-14½, being principal and interest of a debt contracted by Syed Kazim Hossein Khan, the late husband of the defendant, in witness whereof the plaintiff produces a letter, dated the 11th Poos 1251 F., bearing the impression of the signet of the deceased debtor.

Defendant denies that her husband ever borrowed the money, alleging that mouzah Kowat where he resided, is likewise the residence of a stamp vendor, from whom a stamp paper could have been easily procurable for the execution of a deed in due form, if the debt pleaded by the plaintiff were actually incurred, but that Mohce Doss, a servant of her deceased husband, always had the keeping of his seal, and it was not improbable that the plaintiff has had it impressed upon his letter through his agency, by some unfair means.

The principal sudder ameen dismissed this case on the 8th September 1848, placing no reliance on the testimony of plaintiff's witnesses, and assuming the fact of the letter having been originally engrossed upon plain paper without the attestation of subscribing witnesses; and its not having been subsequently replaced by a bond on stamp paper on the expiration of the year limited for repayment, as prejudicial to the claim.

In appeal, it is argued that the existence of the signature of the respondent's deceased husband, and the impression of his seal on

the letter are undeniable proofs of the justice of the appellant's claim; that it is unusual for letters to be attested by witnesses, but that those who were present at the transaction had fully verified it by their testimony, and that a letter was accepted by appellant in consequence of Kazim Hossein, having won his confidence by his punctuality in refunding previous loans.

The date of the letter upon which the merits of this case are supposed to be supported, is one corresponding with the 17th September 1843, and the action is not brought until after the death of the debtor and of the asserted scribe. In the body of the note 405 rupees is represented as the amount of the sum borrowed, which tallies with the evidence of the witnesses on this point, but in the heading of the chit rupees 400 only is acknowledged to have been received. Not one of the witnesses is a resident of Kowat, where the transaction is reported to have taken place, and they all affirm that the *signature* as well as the *seal* of Kazim Hossein was attached to the letter, but on inspection I find that the latter *only* is impressed thereon, and as it is satisfactorily proved that this signet invariably remained in the custody of one Mohce Doss, (the reputed scribe), who usually transacted the business of the deceased, and between whom and the defendant feuds have subsisted subsequently to the death of Kazim Hossein, I cannot but come to the conclusion that this case has been trumped up in connivance with some one who has had access to the use of the seal, and, deeming the decision of the lower court entirely correct, I confirm the same, and dismiss the appeal with costs.

THE 22ND JANUARY 1850.

No. 39 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 29th August 1848.

Tecluk Ram, (Defendant,) Appellant,

versus

Baboo Ameer Sing and Baboo Rajputtee Sing, (Plaintiffs,) Respondents.

THE suit which gave rise to this appeal was instituted on the 16th September 1846, for the possession of 71 beegahs of land and 45 mahoa trees situated in mouzah Kurukeea, pergunnah Beheea, valued at rupees 1,261-8, by the reversal of the orders of the deputy collector, the superintendent of survey, the magistrate, and the sessions judge, dated respectively the 31st December 1844, the 29th February 1845, the 26th February and 16th April 1846, as well as to obtain the produce of the same, estimated at rupees 235-14-6, for the years 1252 and 1253 F.

The plaint sets forth that mouzah Kurukeea, pergunnah Beheea, the property of the plaintiffs, and mouzah Kumroon, the property of

the defendant, are contiguous estates, being bounded by a ridge, which originates on the confines of mouzah Khundae Geauh and by a meandering course joins the boundary of mouzah Bunnahee; mouzah Kurukeea lying to the east and Kumroon to the west of this ridge. That the defendant instituted proceedings in the criminal court, objecting to one Ramdeal Rai building a house on ground appertaining to the plaintiffs, but that the boundary above detailed was, after due investigation, reported by the darogah to be correct. That notwithstanding this, the defendant pointed out another ridge which rises in mouzah Jadoopoor and extends to mouzah Bunnahee to be the actual boundary, during the progress of the revenue survey. That the deputy collector, whilst fixing the boundaries, went off to a landmark in Jadoopoor, and ran a meandering ridge 70 rods west from that mark, where the boundaries of mouzahs Khundae Geauh, Kurukeea, and Kumroon, meet in a westerly direction a little way, and then joined it to the borders of mouzah Bunnahee, constituting it the boundary of mouzahs Kurukeea and Kumroon. That 40 beegahs of land (by measurement only 35,) which thus came within this and the old boundary, were adjudged by the deputy collector to mouzah Kumroon. That defendant subsequently brought forward disputes under Act IV. of 1840, before the magistrate, through one Bhyroo Sing, his servant, against Bekramejet Sing, a dependant of plaintiffs, which after some litigation resulted in the ridge emanating in Jadoopoor and extending to Bunnahee, which was originally pointed out by the defendant to the deputy collector, being maintained as the true boundary. That this decision also deprived plaintiff of 36 beegahs more, which by the marks fixed by the deputy collector had come within the precincts of mouzah Kurukeea. Hence this suit.

Defendant affirms that a ridge taking its rise from the border of mouzahs Khundae Geauh and Jadoopoor, and passing to the west of the village of Kurukeea and east of the dwelling of Ramdeal Roy, and joining the limits of mouzah Bunnahee, is the boundary dividing mouzah Kurukeea from Kumroon, the former lying to the east and the latter to the west of the ridge. That the landmarks fixed by the deputy collector and the awards of the magistrate and his deputy are in accordance therewith. That the boundaries alleged by the plaintiffs and those reported by the darogah are not correct, nor has the plaintiff advanced any thing to refute the orders of the deputy collector and the magistrate.

The principal sudder ameen upheld the boundary fixed by the deputy collector, and decreed to the plaintiffs possession of beegahs 33-18-10, leaving the mesne profits to be ascertained by an ameen in execution of decree.

The appellant urges that he holds not a space of land east of the mark planted by the deputy collector. That the award of the magistrate in his favor accords with this mark, and that the lands decreed to the respondents lie to the west of the deputy collector's boundary, and have been in the appellant's possession of old.

This case was decided by the principal sudder ameen after a most patient investigation, as well as minute survey of the land *sub lite*. The boundary laid down by the deputy collector is perfectly clear and intelligible, and correctly depicted on the map according to the most authentic information obtainable on the spot. This line of demarcation has been upheld by the principal sudder ameen in his judgment (which is recorded in detail) of the 29th August 1848, and seeing no grounds whatever for impugning the accuracy and justice of his decision, I uphold the same, and dismiss the appeal with costs.

THE 22ND JANUARY 1850.

No. 41 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 29th August 1848.

Baboo Ameer Sing and Doolhin Utchraj Kooer, (Plaintiffs,) Appellants,

versus

Teeluk Ram, (Defendant,) Respondent.

THIS is an appeal against the same decision of the principal sudder ameen as that recorded in the preceding number. The plaintiffs are appellants in the present instance, and they solicit a decree for the full quantity of land sued for by them, grounding their claim upon the report of the darogah and their occupation for ten years anterior to the survey.

Having confirmed the judgment of the lower court in case No. 39, and upheld in its full integrity the boundary of the deputy collector, which separates the two villages of Kurukeea and Kunroon, the prayer of the appellants, soliciting possession of the land also to the west of the line of demarcation, cannot be complied with, and the appeal is in consequence dismissed with costs.

THE 23RD JANUARY 1850.

No. 40 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 8th September 1848.

Essloke Tewarry, (Plaintiff,) Appellant,

versus

Syed Oulad Hosein and nine others, (Defendants,) Respondents.

THIS suit was originally instituted by the plaintiff (appellant,) on the 9th July 1847, in the court of the moonsiff of Gurhune, but being connected with another case which was pending before

the sudder ameen, they were both made over to the principal sudder ameen for trial upon the abolition of the sudder ameen's court.

Plaintiff sued for the sum of rupees 98-3-3, being principal and interest of a quarter of the rent due from the defendants for 15 beegahs of land in mouzah Chahar Ghat, pergunnah Beheeah, from 1251 to 1254 F. He states that Syed Oulad Hosein, one of the defendants, having borrowed the sum of Sicca rupees 500 from himself, Gean Tewarry, Salik Ram Tewarry, and Juttee Tewarry, (four brothers,) let to them, in consideration thereof, the aforementioned parcel of land on a jumma of rupees 60 per annum, agreeably to a deed drawn up in the names of Juttee Tewarry and Gean Tewarry, on the 24th Aughun 1241 F.; plaintiff and Salik Ram Tewarry assuming joint possession under a private understanding. That they then sub-let to one Jhukroo Thakoor from 1241 to 1244 F., at an annual jumma of rupees 75, who paid all four of them the stipulated rent in equal proportion. That Oulad Hosein and Ammuldar Hosein took possession of the land in 1245 F., engaging to pay annually the same rent, viz. rupees 75, which they continue to discharge to the plaintiff, Juttee Tewarry, the heirs of Gean Tewarry and Salik Ram Tewarry, up to the year 1250 F., since which to 1254 they have fallen into balance.

Syed Oulad Hosein, defendant, confirms the statement of the plaintiff with respect to the loan and the consequent settlement of the land with the plaintiff and his brothers, as well as his subsequent engagement for the same. He pleads, however, entire payment to them of the rent up to 1252 F., objecting to pay those of 1253 and 1254, in consequence of the sum advanced having been cleared off by the usufruct of the property from the date of the bond to the year 1252 F.

The other defendants allege that plaintiff is totally unconnected with the transaction, with which he would fain associate himself by entering into collusion with Oulad Hosein, and owing to the instrument by which it is supported having been mislaid.

The principal sudder ameen dismissed both this and case No. 71, in which the full amount of rent due for this identical land was sought by Juttee Tewarry and Gean Tewarry, on the 8th September 1848, remarking that as the plaintiff's pretensions to a share in the transaction were involved in dispute, his action was inadmissible before the formal adjudication of that point.

The appellant urges that the mere absence of a written engagement is no sufficient ground for the dismissal of a claim for revenue, such as his, since Syed Oulad Hosein, one of the respondents, does not deny holding the land at the annual rate of rent demanded, and that, if the principal sudder ameen entertained any doubts about the appellant's interest in the transaction at issue, he ought to have called upon him for proofs to establish that point, and not have

dismissed his case in so summary a manner, because the case alluded to by him had shared the same fate.

The principal sudder ameen's judgment in case No. 71, not having been appealed, has now become final, and as the claim of Juttee Tewarry and Gean Tewarry for rent for this identical land was disallowed, *à fortiori* must this also, as standing on far weaker grounds than did that suit. There is nothing in the evidence, moreover, adduced by the plaintiff, on which any order save that of dismissal could with propriety be passed, even supposing credit to be given to the testimony, but when I find the witnesses deposing to the minutest occurrences of fourteen years' standing with the freshness of yesterday, I have no hesitation in rejecting it altogether as tutored, and, confirming the judgment of the lower court, I dismiss the appeal with costs.

THE 24TH JANUARY 1850.

No. 42 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 6th September 1848.

Radherummun Ojha, (Plaintiff,) Appellant,

versus

Rookmunee Dutt Ojha, (Defendant,) Respondent.

THIS suit was preferred by the plaintiff (appellant) on the 3rd July 1847, for the recovery of the sum of rupees 412-13-3-4, principal and interest, being the amount paid by him in behalf of the defendant in liquidation of a decree of court.

Plaintiff alleges that the defendant and himself are two brothers, who lived together and had their transactions in common, up to the month of Maugh 1249 F.; it being usual on the occasion of a loan being contracted for the brother who chanced to be present to execute the requisite deed. That in accordance with this custom, plaintiff borrowed the sum of rupees 341-8 from Rungoo Sahoo, and entered into a bond for the same on the 12th Phalgun 1243 F. That he handed over this amount together with some collections of revenue made by him to the defendant, who expended the whole in celebrating the nuptials of their nephew. That from Maugh 1249 F., plaintiff and defendant boarded separately and divided the movable property owned by them in the district of Mozufferpoor, the rest of their property, together with the pecuniary and other transactions, not excepting the liquidation of previous loans, continuing joint as heretofore. That notwithstanding this, the defendant has failed to liquidate the sum, owing to the heirs

of Rungoo Sahoo, who having obtained a decree from court, recovered the sum of rupees 825-10-6-8 from him alone ; for a moiety of which, viz. rupees 412-13-3-4, the defendant was liable.

Defendant asserts that the suit ought not to have been instituted in this district, that he is totally ignorant of the transaction with which the plaintiff connects him, having never heard of the loan nor received it ; that the marriage of their nephew took place after their separation, before which it was usual for the names of both brothers to appear in deeds entered into for their joint benefit.

This case was nonsuited by the late sudder ameen, on the 15th September 1847, on account of its being locally inadmissible in this district, but having been remanded by me on the 14th January 1848, it was re-tried by the principal sudder ameen, in consequence of the intermediate abolition of the office of sudder ameen.

The principal sudder ameen dismissed the suit, in the absence of proof of the debt having been incurred with the sanction of the defendant, or of the money having been appropriated to the joint purposes of the parties ; the marriage of the plaintiff's nephew having been effected, as deposed to, by the defendant's witnesses, subsequently to their separation in 1249.

In appeal, the appellant refers to a letter filed on the record written by the defendant to his gomastah, desiring him to mention to the heirs of Rungoo Sahoo his readiness to discharge the debt owing to them, as indicative of the privity and admitted liability of the respondent for it, urging that there is ample *oral* testimony adduced to prove that the debt was contracted for the mutual benefit of the parties, and applied, together with other moneys collected by the appellant, and made over to the respondent, for the marriage of their nephew.

I agree entirely with the principal sudder ameen in the conclusions at which he has arrived. There is nothing, in my opinion, which has been adduced by the plaintiff to make the defendant responsible in this case. The letter to which the appellant alludes has not even the signature of the defendant on it, but some curious hieroglyphic on the top, which may be the sign manual of any one or no one, nor is there any thing either in the body of the letter which can *legally* connect *this* case with the casual allusion to Rungoo Sahoo's money referred to therein. Added to which, moreover, I perceive that the original case was decided on an ikbal-davee of the plaintiff, and that the deed was never even produced in court. Under these circumstances, I confirm the judgment of the lower court, and dismiss the appeal with costs.

THE 25TH JANUARY 1850.

No. 43 of 1848.

*Regular Appeal from the decision of Syed Munour Allee, late first grade
Principal Sudder Ameen of Shahabad, dated 7th September 1848.*

Mr. James Tosh, (Plaintiff,) Appellant,

versus

Towukkul and five others, (Defendants,) Respondents.

THIS action was preferred by the plaintiff (appellant) on the 28th December 1847, for the recovery of rupces 525-5, principal and interest, as damages for the loss of an indigo crop, under the following circumstances.

Plaintiff states that he had a crop of indigo in a field consisting of 50 beegahs in mouzah Roodurpoora, attached to his factory called Ellamabad, and, observing that his fields were frequently grazed down by cattle, he desired his servants to be on the alert, who, on the 26th July 1847, discovered 150 head of cattle belonging to the defendants grazing, and otherwise destroying the crop growing in the field alluded to; that the cattle were in consequence all taken to Dehree, whence they were removed to another factory. That the defendants upon this charged the plaintiff's servants with the theft of the cattle before the magistrate, who imposed a fine of 50 rupees upon him, and instructed him to have recourse to the civil court for any loss he might have sustained.

Defendants deny the trespass *in toto*, alleging that cattle never feed on indigo leaves, that those belonging to them were seized from lands in which they were pasturing away from the plaintiff's indigo fields, and that it is merely in revenge for the fine levied from him by the magistrate that the plaintiff has brought this action.

The principal sudder ameen dismissed the suit, relying on the evidence of the defendants' witnesses, who deposed to the plaintiff having realized a crop from the field, and in consequence of the cattle of the former appearing by the plaintiff's own witnesses to have been detected only one day in the act of grazing.

In appeal, it is contended that it was in fact the trespass of one day alone and not more, as asserted in the plaint, that committed the damage for which appellant sought compensation; that the testimony of respondents' witnesses relative to his having realized a crop from the field at Rooderpoora, is not trustworthy, since it is hardly possible that a cultivation of indigo in which the plant had risen a span high, could have preserved any vestige of a crop after having been entered upon by 150 head of cattle, great and small, and that no malice having been brought home to the appellant, more attention should have been bestowed by the lower tribunal upon the minute and uniform evidence of his witnesses, regarding every essential point connected with the suit.

After a careful perusal of the evidence, I am clearly of opinion that the judgment of the lower court in dismissing this suit is perfectly correct. The date of trespass in the petition of plaint is distinctly given by the plaintiff as the 26th July 1847, but the day before the evidence was taken, viz. some seven and half months after the institution of the action, the plaintiff corrected it to the 6th July 1847, or the 8th Assar 1254.

Of the four witnesses examined, two depose to the date of trespass being the 7th or 8th Assar: a third is ignorant of the precise day; and the fourth swears to its being on the 6th or 7th Assar, in other words the 4th or 5th of July. The last witness, moreover, tells us on oath that the indigo was sown in Assar, and that it had attained the height of a span when the injury was sustained. This is pretty good growing for 7 or 8 days. Evidence such as this is totally insufficient to support any other order but that of dismissal, and, in confirming the decision of the principal sudder ameen, I reject the appeal with costs.

THE 28TH JANUARY 1850.

No. 44 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 22nd November 1848.

Ramun Opadheca and ten others, (Plaintiffs,) Appellants,

versus

Shaik Ruhimbuksh and three others, (Defendants,) Respondents.

PLAINTIFFS (appellants) instituted this action on the 18th January 1848, with the view to obtain possession of 75 beegahs of land in mouzah Sonethur, pergunnah Arrah, together with the mesne profits thereof for the years 1253 and 1254 F., amounting to rupees 719, by the reversal of a summary award, dated the 12th November 1846; the total estimate for stamp duty being rupees 1,369.

The plaint sets forth that mouzah Sonethur is composed of 300 beegahs, of which 224 were held by the defendants as ayma land, and the remaining 75 by the maliks as chout malikana; that when the entire ayma came under the operation of the resumption laws, the said 75 beegahs were separately settled by the Government functionaries at an annual jumma of rupees 59, with Moheep Narain Opadheca and others, the former maliks; a distinct pottah, dated the 30th July 1844, being granted to them under instructions to pay the rent to the aymadars. That the maliks thus kept possession, till Mahomed Hossein and others, having obtained a decree against them, brought their malikana lands to sale on the 28th May 1844, which were purchased by Madho Lall, one of the defendants, who, being unable to make good his bid, transferred the bargain to the plaintiffs. That having paid the purchase money, they obtained from

him a deed of sale on the 12th June 1844, duly attested by the register, as well as possession of the property. That the defendants, the aymadars, nevertheless sued Madho Lall for the rent of 1252 F., and got a summary award on the 6th September 1845. That the plaintiffs repeatedly offered the rent to the defendants, but they refused acceptance, and so did the civil court and the collector, to whom plaintiffs subsequently tendered it; that, finding themselves thus balked, the plaintiffs instituted a regular suit to obtain the annulment of the summary award, but the additional moonsiff dismissed their action on the 17th June 1846, because they were not among the parties sued summarily, remarking that, if the plaintiffs who were till then in possession, found themselves ousted hereafter, they should then seek redress from the courts. That the plaintiffs acquiesced in the judgment and continued to collect the rent of 1252 F., conceiving nothing detrimental to their interests from it, nor did the defendants take any steps towards their dispossession, but that after a time Mahomed Hossein and others again opposed them by the institution of another suit before the collector against Dookhet Gwalla, one of their tenants, for rupees 53-12, as the rent of the year 1252 F., which was decreed to them by the collector on the 12th November 1846, in spite of the united protests of the plaintiffs and their tenants, and that the defendants having completely entered upon the collections have dispossessed the plaintiffs. Hence this suit.

The answer of Madho Lall, one of the defendants, corresponds with the statements made by the plaintiffs.

The other defendants allege that the malikana lands were settled with the maliks merely in consideration of their being former cultivators of the same, beyond which they never possessed any other right in them. That it was merely this right that was brought to sale in execution of their decree and purchased by Madho Lall, who had no power to alienate the lands to the plaintiffs, Construction No. 702 being prohibitory of such a measure. That even admitting that Madho Lall purchased the proprietary right vested in the former maliks and disposed of it to the plaintiffs, still they were not justified in assuming possession of the chout malikana lands, the money allowance provided at the settlement and payable annually by the Government being all they could expect. That the deed of sale of the 12th June 1844, pleaded by the plaintiffs, is untrustworthy, for the sale which was held on the 28th May was confirmed on the 30th July following, hence it was impossible for the plaintiffs to have obtained an alienation in their favor preparatory to the confirmation. That if the asserted purchase was a *bonâ fide* transaction, Madho Lall would have been made to admit the fact before the court, and the confirmation of the judicial sale would have been in favor of the plaintiffs. And that more than a year having elapsed since the date of the award obtained by the defendants against Madho Lall, it is now intangible.

The principal sudder ameen dismissed this case, observing that Madho Lall having been proved to be a defaulter by a summary decree, dated the 6th September 1845, the suit for the reversal of which was lost in the civil court, the defendants were fully justified in resuming the lands, over which the plaintiffs had no right of possession.

The appeal rests entirely upon the facts and arguments advanced in the original plaint.

The judgment of the principal sudder ameen is, in my opinion, perfectly correct, and, finding no cause for interference, I confirm the same, and dismiss the appeal with costs.

THE 29TH JANUARY 1850.

No. 45 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen, dated 23rd November 1848.

Jugroop Roy, (Plaintiff,) Appellant,

versus

Mucchoo Roy and thirteen others, (Defendants,) Respondents.

THIS suit was originally instituted by the plaintiff (appellant) on the 8th February 1847, for the possession of 28 beegahs of alluvial land in mouzah Semurreah, pergunnah Arrah, as well as for the recovery of the mesne profits for the year 1253 F. at the aggregate valuation of rupees 689-0-6, but upon its return to the sudder ameen, after the annulment of an order of nonsuit issued by that officer, the mesne proceeds of 1252 were likewise included in the suit, which raised the valuation to rupees 1,124-0-11, and the court of sudder ameen having been abolished, the case was decided *de novo* by the principal sudder ameen.

Plaintiff alleges that in 1252 F., agreeably to a pottah, dated the 7th of Maugh, he obtained a lease of 80 beegahs of alluvial land in mouzah Semurreah from Seetul Pershad, the proprietor, with defined boundaries, (that to the south being another farm of 220 beegahs held by Mucchoo Roy, one of the defendants, from the same individual, in the identical estate,) at an annual jumma of rupees 151-8 from 1252 to 1258. That Mucchoo Roy dispossessed the plaintiff from 31 beegahs of his lease by procuring the same to be cultivated by Maha Raj Roy and others, and appropriating the produce, which induced the plaintiff to sue them for the rent of 1252 F. That in 1253 F., the said Mucchoo Roy continued to hold possession of this parcel, and had 3 beegahs from it, and 8 from the remaining 49 beegahs of the plaintiff's lease, as well as 30 beegahs (28 of which he still occupied) from his own farm of 220 beegahs, measured off by the collector as appertaining to mehal Sheoderee, a Government estate. That Mucchoo Roy, having by this means lost 30 beegahs, has no right still to hold 220 beegahs, but must sustain a deficiency

to that extent, and that, his lease being the southern boundary of the plaintiff's farm, he (the plaintiff) is fairly entitled to the land sued for by him.

Seetul Pershad, one of the defendants, answers that beegahs 220-16-6 were relinquished to his ancestor, Jankee Pershad, by the Government, within certain indicated boundaries, in indemnification for losses sustained by him by diluvion; that this land was originally let to Heerah Sing from 1245 to 1249, and subsequently to Mucchoo Sing from 1250 to 1256 F.; that the plaintiff has no right to any portion of it, being lessee of a distinct parcel of 80 beegahs on an annual jumma of rupees 151; and that 33 beegahs having been abstracted from Mucchoo Sing's lease by the plaintiff's own showing, there cannot be any excess in his possession, whilst the plaintiff's farm, upon being measured in 1252 F., yielded an area of beegahs 90-7.

Ramlall and Ramchurn Doss disown being cultivators of the land *sub lite*, the latter asserting that, being the putwarree of the estate, he has been included in the prosecution in order to exclude his evidence in the case.

The principal sudder ameen dismissed this suit on re-trial, observing that, as the plaintiff appeared, upon measurement by an ameen of the court, to be in possession of beegahs 81-10-18, or beegahs 1-10-18 in excess of the quantity let to him, whilst on the other hand Mucchoo Roy, the defendant, by the same measurement, held beegahs 221-16, or a trifling excess of beegahs 1-16, there was no ground to award the former the beegahs 28-11-16 to which he laid claim from the lease of the latter.

In appeal, it is insisted that there ought to be a curtailment in the lease of Mucchoo Roy, the respondent, to the extent of 30 beegahs, which is admitted to have been annexed to Sheoderee, instead of which there is an increase, whilst the area of the appellant's farm, which would have exhibited a decrease of 11 beegahs, has been brought up to the original mark by the measurement of sundry tracts of sand and water, as appertaining thereto.

I see no ground whatever for calling in question the integrity of the ameen's measurement, nor of the correctness of the judgment of the lower court which is based thereupon. I therefore uphold the decision of the principal sudder ameen, and dismiss the appeal with costs.

THE 30TH JANUARY 1850.

No. 46 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 22nd November 1848.

Peima Doobé *alias* Peim Doobé, (Plaintiff,) Appellant,

versus

Jubab Juttee and forty-three others, (Defendants,) Respondents.

THIS suit was instituted by the plaintiff (appellant) on the 11th January 1848, for the possession of mouzah Huttellipore, together with the mesne profits of the same for the years 1253 and 1254 F. S., as well as for the enrolment of his name as proprietor thereof; the aggregate valuation of the suit for stamp duty being rupees 1,399-14-6 $\frac{1}{4}$.

Plaintiff states that the whole of mouzah Huttellipore was brought to sale for arrears of abkaree revenue, amounting to rupees 511-7, on the 3rd August 1841, on which occasion Jubab Juttee, Bundajee Juttee, with some other shareholders of the estate, borrowed the sum of rupees 511, 7 annas from him, and thereby obtained the annulment of the sale. That having subsequently received a further loan of rupees 250, they conditionally sold the property to the plaintiff for the consolidated sum of rupees 761-7, under a formally registered deed of agreement, dated the 16th September 1841, promising to liquidate the debt in Bhadoon 1250 F. S. That the defendants having failed in their engagement, the plaintiff procured the foreclosure of the mortgage on the 9th April 1845, after the expiry of the year of grace, by a summary application to the civil court under Regulation XVII. of 1806; and that although the names of all the defendants have not been included in the deed as sellers, yet as the debt was contracted to meet an exigence in which all were collectively interested, they are jointly liable.

Salig Geer and others, defendants, answer that the estate *sub lite* is the joint property of twenty-two individuals, whose names appear on the rent roll, independent of a host of others, who hold minor shares under them, and that, as of these shareholders only fourteen are represented by the plaintiff to have alienated their shares to him, his suit for the entire property is inadmissible, since mouzah Huttellipore is composed of 381 beegahs, of which only beegahs 33-18-10 appertain to them.

The principal sudder ameen dismissed this case, observing that the wording of the deed of the 16th September 1841 was far from that of a bill of sale, to constitute which the mutual consent of the contracting parties and expressions in the past tense are essential.

In appeal, it is contended that the deed commented upon by the principal sudder ameen could not be otherwise worded, since it is not the record of an absolute but a conditional sale, the phraseology

of which is usually no other than that adopted in the instrument in question.

From the evidence adduced it would appear that the Huttellipore estate consists of 381 beegahs, with twenty-two recorded proprietors, together with several other subordinate shareholders. Now, as it is only pretended by the plaintiff that fourteen individuals were parties to the deed of agreement, dated the 16th September 1841, whose aggregate interests in the property appear from the evidence for the defence to amount only to some 33 beegahs or so, it is evident that the plaintiff's claim for possession of the whole estate is clearly inadmissible. The principal sudder ameen's judgment is therefore confirmed, and the appeal dismissed with costs.

THE 31ST JANUARY 1850.

No. 47 of 1848.

Regular Appeal from the decision of Syed Munour Allee, late first grade Principal Sudder Ameen of Shahabad, dated 27th November 1848.

Moyaram Tewarce and five others, (Defendants,) Appellants,

versus

Beharce Lall and two others, (Plaintiffs,) Respondents.

THIS suit was originally instituted before the sudder ameen by the plaintiffs (respondents) on the 4th January 1845, for the possession of beegahs 98-5 of land in mouzah Ootimpore, pergunnah Chounsah, as well as for the mesne profits of the same for the years 1249 to 1251 F. S., amounting in the aggregate to rupees 915-12½.

Plaintiffs state that mouzah Ootimpore was previously the property of Mungur Roy, and others, but was purchased by them while a detailed settlement was in course of completion with the former maliks, which was concluded with the plaintiffs; that this arrangement having been disapproved by the Sudder Board of Revenue, a fresh one was effected in 1243 F. S.; that Rampershad and the other defendants paid their rents to them like every other tenant, which the summary decrees they hold will fully evidence, but that the reversal of the awards obtained by the plaintiffs for the rents of 1244 and 1247 against some of the defendants by the civil court has led to their disseisin from 1249 F. S. The plaint concludes with a detail of the boundaries between mouzah Ootimpore and the estates of his neighbours, the defendants; referring to the measurement papers of 1230 and 1244, the settlement proceeding of 1243, and their long previous occupation, in proof of the plaintiffs' right to the land claimed as component parts of mouzah Ootimpore.

The defendants dispute the plaintiffs' right to the lands claimed by them, detailing quite another line of boundary, which they allege was the guide to the settlement effected in 1229 and 1240 F. S.,

and was verified before the moonsiff of Dhungaen in a case in which certain tenants of the defendants' estate were interested, and that although the plaintiffs managed to get the lands they claim measured off as pertaining to them in the progress of the settlement of 1243 F. S., yet the summary awards they obtained for the rent thereof against the defendants' tenants were all annulled by the civil court.

The sudder ameen dismissed this case on the 5th December 1845, and his judgment was upheld by Mr. St. Quintin on the 9th March following; but the Sudder Court quashed both these decisions on the 12th July 1847, and remanded the proceedings in order that the boundary line between the two villages of Ootimpore and Rajpore should be ascertained and defined preparatory to re-trial.

Local enquiries and a measurement having accordingly been completed through the agency of the serishtadar of the sudder ameen's court, and an ameen, the principal sudder ameen decreed this case in favor of the plaintiffs; awarding them possession of the land sued for agreeably to the boundaries indicated by them, believing them to be fully borne out. No wasilaut was, however, allowed prior to the date of suit, the decree, however, containing a provision for it from that period to the final execution of the judgment.

The appeal is grounded mainly upon certain final awards of the moonsiff of Dhungaen, adjudging the land in question to the estate of the defendants,—the enquiries now instituted being opposed to them by the collusion of the ameen with the respondents.

The awards of the moonsiff of Dhungaen above alluded to, cannot be looked upon as final guides to the disposal of the case now *sub lite*, for, although confirmed by the principal sudder ameen in appeal, the *right* to the possession of the land was distinctly reversed by that officer in his judgment of the 29th January 1842, as an open question for future consideration. The decisions of the sudder ameen and the officiating judge are chiefly based upon these awards of the moonsiff of Dhungaen, but the Sudder Court have ruled that this case was dismissed by them on "fanciful and unsatisfactory grounds." A local enquiry therefore became necessary, and although the evidence adduced before the serishtadar in the mofussil is, as usual, very conflicting, still the balance is in favor of the plaintiffs. I therefore uphold the judgment of the lower court, and dismiss the appeal with costs.

ZILLAH SYLHET.

PRESENT: H. STAINFORTH, ESQ., JUDGE.

THE 3RD JANUARY 1850.

No. 126 of 1849.

Appeal from the decision of Baboo Hergouree Bose, Moonsiff of Russool-gunge, dated 20th June 1849.

Dabee Pershad Pal and Hurree Ram Deb, Appellants,

versus

Joogulkishwur Surmah, Respondent.

RESPONDENT sued for rupees 32, damages for abuse given to him, because he declined continuing to perform the priestly rites in their families, on the terms theretofore subsisting, after appellants had preferred a suit against his brother.

Dabee Pershad appellant filed an answer, denying the abuse, denying that respondent is his regular priest, and denying that the land which respondent avers himself to occupy in consideration of his acting as priest, is his (appellant's); and he imputed this suit to enmity founded on two cases in the criminal court.

Hurree Ram filed an answer, pleading that the suit was owing to the failure of the complaint to the magistrate, and that he intended to sue respondent for rent, and further pleaded *alibi*.

Koolochunder Surmah filed a petition, declaring himself Dabee Pershad's priest.

The moonsiff (Baboo Hergouree Bose) distrusted appellants' witnesses, on account of the exact recollection they declared of dates, and their connection with appellants: and, holding respondent's statement of abuse proved, he decreed 10 rupees damages, with full costs.

Appellants now urge that their defence is proved by the evidence of their witnesses before the moonsiff, and the testimony of those examined by Nundlal, one of the two ameens deputed by the moonsiff to enquire locally into the case; that respondent's witnesses are connected with him, and their evidence at variance with the plaint; and that, though the full amount claimed was not decreed, full costs have been allowed,—with other immaterial matter.

JUDGMENT.

The records of the two cases decided in the criminal court in the month preceding that in which this suit was instituted, shew quarrels

between the parties, but do not shew that this suit is founded on mere enmity. The abuse appears to me probable, and I concur with the moonsiff in thinking it proved—and, with advertence to the amount decreed and precedents of the Sudder Court, I see no reason to make any alteration in the moonsiff's decree.

IT IS THEREFORE ORDERED,

That the appeal be dismissed, and the decree of the moonsiff affirmed, with costs.

THE 7TH JANUARY 1850.

No. 8 of 1849.

Appeal from the decision of Moulvee Saadut Allee, Principal Sudder Ameen, dated 25th May 1849.

Ramlochun Surmah and others, Appellants,

versus

Allee Reza, Respondent.

RESPONDENT excepted certain parcels of land sold to various individuals, and declared $\frac{2}{16}$ ths of the remainder of talooka Herlal Chowdree to belong to Brijgobind Dhur, &c. ; $\frac{1}{16}$ th to be the property of Ramsuntose Dhur; and $\frac{13}{16}$ ths to be his own through purchase from Doorgapershad Dhur, who bought it at the sale of the rights and interests of Ram Sherrun Dhur, in execution of a decree: and he sued for possession of his said property with mesne profits.

Ramlochun Surmah, Rammanick Kur, Kishnanund Surmah, and Nursingh Surmah filed two answers, disclaiming all connection with the talooka.

Mahomed Husun answered in avowal, that he had purchased 4 kears, 2 pao of land from Shabutree Dasee, and declared that he had repudiated his purchase on becoming aware of its invalidity.

Dabee Churrun Surmah stated, in his answer, that Ram Sherrun and Ramsuntose were brothers, living *humtaam*, that is, in community of property; that therefore, though $\frac{13}{16}$ ths of the talooka were bought in Ram Sherrun's name, they were really the right of both brothers, as were the $\frac{2}{16}$ ths previously purchased in both names and that Ramsuntose, whose right to $\frac{7}{16}$ ths of the talooka had been recognized in an award by some persons, who arbitrated between the brothers, sold his share to him, Dabee Churrun, with the exception of 6 kears 2 pao, which had been previously sold to Sahib-oodeen and Sheik Rhatea.

Sahib-oodeen, Sheik Rhatea, and his son, filed an answer, avowing purchase of the 6 kears 2 pao already stated to have been bought by the two first of them.

Respondent denied, in his reply, that Ram Sherrun and Ramsuntose were *humtaam*.

The principal sudder ameen (Moulvee Saadut Allee) observes that, as it was undisputed that Ramsuntose had been owner of one-sixteenth of the talooka, there was no occasion to enquire into the purchase by Sheik Rhatea and Sahib-oodeen, who had purchased from him, and, holding respondent's claim to the land and profits in suit established, he decreed in respondent's favor possession of 43 koolbas, 6 kears, 2 pao, 2 jet, 11 pun, 10 gundahs appertaining to the $\frac{1}{16}$ ths of the talooka, with mesne profits from the 24th of Bhadoon 1250, the date of the auction sale to the date of receipt of possession, with respondent's costs with interest against Sahib-oodeen, Sheik Rhatea, Rammanick Kur, Ramlochun Surmah, Ram Sherrun Dhur, Mean Dhun, Lalehunder Dhur, Hurree Sherrun, Upoorba Dasee, Mahomed Hussun, Bydnath, Burkut Oollah, and Parbutteechurrin, releasing the rest from personal responsibility, and saddling respondent with the costs of two of them.

Rammanick Kur, Ramlochun Surmah, Sheik Rhatea, Sahib-oodeen and Dabee Churrin have now appealed. The two first argue, that they are not in possession or shewn to be so, &c. The two next assert their stand on the evidence produced by them; and Dabee Churrin refers to the evidence brought forward by Sheik Rhatea and Sahib-oodeen: and they pray for a local investigation, and advance the new pleas of non-specification of boundaries, and the illegal inclusion of the two of the witnesses on Sahib-oodeen's deed of purchase, as defendants.

JUDGMENT.

I am not satisfied with the evidence implicating Rammanick Kur and Ramlochun Surmah. It is wholly oral, and the witnesses do not say how they know these particular persons to have been in possession of the land in suit. Ramlochun and Rammanick, then, must be released from personal responsibility, and their costs in the court of first instance, and one-third of the costs of this joint appeal, debited on their account against respondent.

Sheik Rhatea acknowledges possession of 9 kears, 2 pao, 3 jets of land, *i. e.*, of 6 kears, 3 jets under old purchase, and 3 kears, 2 pao under purchase from Ramsuntose. I find that 9 kears are excepted from the claim in the plaint, and Sheik Rhatea's vaqueels state that this their client has had no more than 9 kears, 2 pao, 3 jets in his possession, and there is no proof that he has had more, and respondent's vaqueels in answer to my question, say that they do not press for judgment in regard to the small portion in excess of the quantity deducted in the plaint, thus declared to be in possession of Sheik Rhatea, denying at the same time the *bonâ fide* nature of his purchase. Under these circumstances, Sheik Rhatea and his son Mean Dhun, who does not appear to have any interest in the matter separate from his father, must be allowed to retain the 9 kears, 2 pao, 3 jets in their possession, must be absolved from pecuniary responsibility in the case, and must have their costs in the lower

Sursuttee and Bhowanund, the latter of whom accompanied him to the commissioner, filed the petition for sale, &c., and finally received the proceeds, under his, Sumboonath's, receipt, agreeing to be accountable for the money in case it were required to be refunded; that he is not surberakar of the other defendants, and does not know whether respondents tenanted any of their land or not.

Bhowanund answered in disavowal of all connection with the land and summary proceedings, declaring that though Sursuttee was the wife of his brother, he had long lived separate from her, and has nothing to do with her.

Sursuttee's answer sets forth, that Sumboonath is not her surberakar, and was not authorized by her to institute any proceedings under Regulation V. of 1812 against any one; that she received no part of the money realized from respondents or Sumboonath; that respondents had long tenanted 1 kear, 1 pao, 2 jet of land, as per boundaries stated at the foot of her answer, in mouza Ruzakpoor of talooka Bishnath-shome *cum* Shamanund Deb, the hereditary property of herself and minor sons; that they had paid the rent (rupees 2, annas 8,) to the end of 1254 B. S., taking receipts for the same, and it was therefore unlikely that she would claim rupees 30 through Sumboonath; that Sumboonath is a fraudulent person, and respondents who are wealthy, had got up the claim under Regulation V. of 1812 in his name, in order to appropriate the defendant's land by means of a decree; that defendant, perceiving the fraud of respondents and Sumboonath, had reclaimed the land tenanted by the former, in 1255, &c. &c.

The moonsiff (Baboo Ramtaruck Rai) decreed rupees 30, the sum indicated in the receipt, with an equal amount as penalty, with costs in proportion, against the defendants.

Appellants now urge that Sumboonath was not their agent; that respondents' witnesses are unworthy of credence; and that Bhowanund's vaqueel did not produce the evidence sent to him by his client, &c.

JUDGMENT.

The complicity, of Sumboonath and Bhowanund in this case of extortion, appears to me established by the evidence, but I am not certain whether Sursuttee has been an assenting party to the proceedings carried on in her name or not, and in order to the determination of this question, a local enquiry whether Bhowanund and Sursuttee are *lumtaam*, and whether Sumboonath is known to have been the latter's agent, seems necessary.

IT IS THEREFORE ORDERED,

That the decree of the moonsiff be reversed, and the suit remanded for the enquiry indicated above. The price of the stamp on the petition of plaint will be refunded, and the moonsiff will give orders regarding the rest of the costs.